(14)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]

No. [redacted] 28

PITTSBURGH MELTING COMPANY, APPELLANT,

v.

C. E. TOTTEN, INSPECTOR OF THE BUREAU OF ANIMAL INDUSTRY OF THE DEPARTMENT OF AGRICULTURE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FILED JUNE 10, 1905.

(26,951)

(25,355)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No. 525.

PITTSBURGH MELTING COMPANY, APPELLANT,

vs.

G. E. TOTTEN, INSPECTOR OF THE BUREAU OF ANIMAL INDUSTRY OF THE DEPARTMENT OF AGRICULTURE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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1 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1916.

No. —.

G. E. TOTTEN, Inspector of the Bureau of Animal Industry of the Department of Agriculture, Appellant,

vs.

PITTSBURGH MELTING COMPANY, Appellee.

Appeal from the District Court of the United States for the Western District of Pennsylvania.

TRANSCRIPT OF RECORD.

Among the rolls, records and judicial proceedings had in the United States District Court for the Western District of Pennsylvania, at No. 12 May Term, 1915, may be found the following words and figures, to wit:

2 In the District Court of the United States for the Western District of Pennsylvania, May Term, 1915.

No. 12.

PITTSBURGH MELTING COMPANY

vs.

BALTIMORE & OHIO RAILROAD COMPANY and G. E. TOTTEN, Inspector of the Bureau of Animal Industry of the Department of Agriculture.

Appearances:

Reed, Smith, Shaw & Beal.
William Watson Smith.
E. Lowry Humes.

Docket Entries.

Jan. 19, 1915, Bill filed.

Jan. 19, 1915, Proof of notice to Baltimore & Ohio R. R. Co. for Injunction filed.

Jan. 19, 1915, Proof of notice to G. E. Totten, Inspector of the Bureau of Animal Industry of the Department of Agriculture, filed.

Jan. 19, 1915, Motion for injunction argued C. A. V.

3 Jan. 20, 1915, Injunction affidavit of W. H. Wamsley filed.

Jan. 20, 1915, Order granting injunction filed and entered.

Jan. 20, 1915, Complainant's Bond sur Injunction approved and filed.

Jan. 20, 1915, Preliminary injunction issued.

Jan. 20, 1915, Subpœna issued.

Jan. 21, 1915, Subpœna returned served on G. E. Totten, Inspector, by handing to and leaving a true and attested copy thereof with G. E. Totten personally at Pittsburgh, Pa., Jan'y 20th, 1915. Served on Baltimore and Ohio Railroad Company by handing to and leaving a true and attested copy thereof with S. J. Hutchinson, Agent of said Baltimore & Ohio R. R. Co. at the ticket office of said Company, personally at Pittsburgh, Pa. Jan'y 20th, 1915.

Jan. 21, 1915, Preliminary Injunction returned served on Baltimore & Ohio Railroad Company by handing to and leaving a true and attested copy thereof with S. J. Hutchinson, Agent of said Company at the ticket office of said Company personally at Pittsburgh, Pa., Jan'y 20th, 1915. Served the annexed preliminary injunction on the therein named G. E. Totten, Inspector, by handing to and leaving a true and attested copy thereof with G. E. Totten, personally at Pittsburgh, Pa., Jan'y 20th, 1915.

Feb. 9, 1915, Answer of G. E. Totten filed.

Feb. 24, 1915, Præcipe for appearance of Wm. Watson Smith for defendant B. & O. R. R. filed.

Mar. 11, 1915, Replication of Pittsburgh Melting Company to the answer of G. E. Totten allowed to be filed nunc pro tunc.

4 July 1, 1915, Motion and order for Subpœna duces tecum filed and entered.

July 1, 1915, Præcipe for subpœnas in behalf of the United States filed.

July 2, 1915, Subpœna duces tecum issued directed to Pittsburgh Melting Co.

July 2, 1915, Subpœna duces tecum issued directed to R. J. Smith.

July 2, 1915, Subpœnas issued on behalf of the United States directed to Frank Synodis, Dan Mackus, and Nick Manesiotis.

July 6, 1915, Subpœna duces tecum directed to Pittsburgh Melting Company, returned served personally on Wm. H. Wamsley, Gen'l Manager of Pittsburgh Melting Co., at Herrs Island, Pittsburgh, on July 6th, 1915, and filed.

July 6, 1915, Subpœna duces tecum directed to R. J. Smith, returned served personally on R. J. Smith at Pittsburgh, Pa., July 3rd, 1915, and filed.

July 6, 1915, Subpœna directed to Nick Manesiotis returned served personally on Nick Manesiotis at Pittsburgh, Pa., and filed.

July 6, 1915, Subpœna directed to Frank Synodis, returned served personally on Frank Synodis at East Pittsburgh, Pa., July 6th, 1915, and filed.

July 6, 1915, Subpœna directed to Dan Mackris returned served personally on Dan Ma-kris at East Pittsburgh, Pa., July 6th, 1915, and filed.

July 7, 1915, Hearing begun, ent.

July 7, 1915, Plaintiff's witnesses sworn: Hay Walker, Jr., and W. H. Wormsley.

July 7, 1915, Defendant's witnesses sworn: Robert A. Smith, Robt. H. Sellers, Marshall J. Buck, Dr. Arthur S. Harper, James Gibson, Paul Frederick, W. H. Irwin, G. G. Fox, J. R. Powell, Henry B. Galbreath, Dr. Mohler, Nick Manesiotis, Frank Synodis, Dan Makris, Arthur Lowenstein, Robt. R. Henley and B. F. Black.

July 7, 1915, Interpreter sworn.

July 7, 1915, Hearing adjourned and continued sine die.

July 8, 1915, Memoranda of Trial filed.

July 13, 1915, Notes of trial filed.

July 17, 1915, Opinion filed and entered awarding decree conforming to prayers of the bill.

Jan. 22, 1916, Decree filed and entered.

Feb. 5, 1916, Petition for appeal, assignments of Error and Order of Court filed and entered.

Feb. 7, 1916, Citation awarded and issued.

Feb. 8, 1916, Stipulation and order re contents of record on appeal filed and entered.

Feb. 9, 1916, Citation returned service accepted by Reed, Smith, Shaw and Beal.

Bill of Complaint.

Filed January 19, 1915.

To the Honorable the Judges of said Court:

Your orator complains and says:

First. That your orator, the Pittsburgh Melting Company, is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania; that the Baltimore and Ohio Railroad Company, one of the defendants, is a corporation organized and existing under the laws of the State of Maryland; and that G. E. Totten, the other defendant, is an inspector assigned by the Bureau of Animal Industry of the Department of Agriculture to supervise official work at the official station of said Bureau at Pittsburgh, in the Commonwealth of Pennsylvania, and as such official he has under his supervision and direction a number of inspectors, inspectors' assistants and other employes of said bureau.

Second. That your orator owns and operates a manufacturing plant situate in the City of Pittsburgh in the Commonwealth of Pennsylvania, which is connected by means of a railroad switch or siding with the railroad of the said Baltimore and Ohio Railroad Company, at which plant among other products your orator manufactures tallow oil, sometimes known as oleo oil.

Third. That the said Baltimore and Ohio Railroad Company maintains and operates a railroad which, among other places, extends from the City of Pittsburgh, in the Commonwealth of Pennsylvania to the City of New York in the State of New York,

where it connected with a line of steamers sailing regularly for Rotterdam, Holland, and by said railroad, it is now, and for many years has been, engaged in the transportation of persons and property in interstate and foreign commerce between said points. That it has established a through route for the shipment of tallow oil from the said City of Pittsburgh to Rotterdam, Holland, and has heretofore from time to time received and transferred tallow oil by such route from the said plant of your orator in the City of Pittsburgh, Pennsylvania, by way of its said railroad to New York, and thence by way of said line of steamers to Rotterdam, Holland.

Fourth. That tallow oil is the product of the fat of slaughtered beef cattle and is used in the manufacture of soap and for other industrial purposes.

Fifth. That the business of manufacturing tallow oil has been carried on by your orator and its predecessors at its said plant for more than seventy years, and during recent years your orator has been shipping large quantities of such oil by way of the railroad of said Baltimore and Ohio Railroad Company and the steamers, hereinbefore referred to, to its customers at Rotterdam, Holland, and the use made thereof is entirely determined by your orator's said customers, and of and over such use your orator has no knowledge or control whatever.

8 Sixth. That on or shortly after October 1, 1906, at which time the Act of Congress commonly known as the Meat Inspection Amendment contained in the Act of Congress entitled, "An Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and seven," approved June 30, 1906, went into effect, the Department of Agriculture, claiming to act under the authority of the said Act of Congress, established at the said plant of your orator a system of inspection whereby the entire operation of your orator's plant was under the direction of an inspector assigned by the Bureau of Animal Industry, one of the Bureaus of the said Department of Agriculture, to supervise its official work at its official station at Pittsburgh, Pennsylvania, and of such assistant inspectors as said chief inspector should from time to time designate. Thereafter until on or about June 26, 1909, no operations of your orator at said plant were carried on by day or by night except under the direct supervision of such inspector or inspectors, to whom your orator was required to furnish, free of charge, an office, including light and heat.

That the mode of inspection carried on by such inspector or inspectors at your orator's said plant until about May, 1907, was as follows:

The fat from which tallow oil is manufactured by your orator is collected by wagons which visit various establishments in Allegheny County, in the Commonwealth of Pennsylvania, where beef cattle are slaughtered or slaughtered animals are sold for meat, and as the fat was delivered to your orator's said plant by such wagons,

9 the inspector inspected it by looking at and smelling it. Subsequently during the process of manufacture the inspector made observations as to the temperature maintained in boil-

ing the fat. Again when the oil was ready for shipment it was inspected by the inspector by tasting and smelling it.

In addition to the inspection of the product itself the inspector maintained a general supervision over the condition of the floors, kettles and other utensils of the plant.

Notwithstanding your orator was advised that its said plant was not subject to the provisions of the said Act of Congress known as the Meat Inspection Amendment, your orator very willingly acceded to the said inspection because the mode of inspection adopted thereunder was reasonable and in fact less rigorous than your orator itself had established and was maintaining in connection with the manufacture of its products.

Seventh. That on or about May 10, 1907, your orator was informed by the said Bureau of Animal Industry, through its local official station, that the Department of Agriculture had adopted a regulation whereby the mode of inspection theretofore maintained at your orator's said plant would be discontinued, and whereby your orator thereafter would not be permitted to use, in the manufacture of tallow oil, fat obtained from animals slaughtered at other than official establishments, as determined by the regulations of the said Department, such establishments being those at which official inspection under the said Act of Congress was maintained.

10 That the mode of inspection adopted by the said Bureau of Animal Industry, pursuant to the said regulation of the Department of Agriculture, was as follows: The driver of each wagon delivering fat to your orator's said plant, was required to obtain from each person from whom he obtained said fat, and to deliver to the Bureau's Inspector, a certificate stating that the fat was from the carcasses of beef cattle which had been slaughtered at one of said official establishments. The only service performed by said inspector was to ascertain that the total weight of fat on such wagon corresponded to the total weight of fat as shown on said certificates. No inspection was made of the fat itself, as so delivered, or of the tallow oil, either in the process of manufacture, or as finally prepared for shipment.

The said regulation of the Department of Agriculture, and the said mode of inspection adopted in pursuance thereof, were enforced upon your orator from time to time with increasing rigor, so that by June, 1909, your orator was not only absolutely prohibited by the said Bureau of Animal Industry from purchasing and using in the manufacture of the said tallow oil the fat of animals slaughtered at other than said official establishments, but in addition thereto, the said Bureau established a so-called "Black List" of prohibited dealers, being a list of the names of a large number of retail meat dealers in Allegheny County, Pennsylvania, from whom your orator was prohibited by the said bureau from purchasing any fat whatsoever, for the sole reason, as stated by the said Bureau, that the said dealers used in their business uninspected as well as inspected animals, and that by reason thereof it was impossible for the various Inspectors to determine with certainty, whether the fat

11 purchased by your orator had been taken from inspected or uninspected animals.

Eighth. That a large number of establishments in Allegheny County, Pennsylvania, from which your orator for many years past had obtained the fats used by it in the manufacture of tallow oil, and upon which it had largely depended for its supply, were and are not official establishments as determined by the regulations of the Department of Agriculture, said establishments being engaged entirely in the slaughtering of cattle for, or the selling of meat in, intrastate business, and if your orator had been compelled to submit to the aforesaid requirements of the Bureau of Animal Industry, the result would have been to deprive the persons owning the said establishments at which official inspection had not been established, of any opportunity to sell the fat from their operations for the purpose for which it was best suited and for which it was most available, and at the same time would have wholly prevented your orator from obtaining pure and fresh fat from the establishments in the vicinity of your orator's said plant, and thereby your orator would have been deprived of a large part of its supply of fat, and would have been required in the conduct of its business, to purchase and obtain its supply of fat from animals slaughtered at establishments mostly situated at great distances from your orator's said plant. As in the manufacture of tallow oil, it is essential that the fat should be fresh and pure, and the fresher the fat the purer the quality of the oil, your orator, by compliance with the said demands of the Bureau of Animal Industry, would also have been prevented from obtaining the best quality of fat for use in making said oil, and at the
12 same time the persons operating said establishments would have been deprived of the opportunity to sell a valuable part of their property, the value of the fat of beef cattle amounting to from $2 to $4 per head.

In addition thereto, compliance by your orator with the aforesaid requirements and demands attempted to be imposed by the said Bureau of Animal Industry, would have resulted in greatly increasing the cost of tallow oil so made by your orator, would have reduced the quality of the said oil, would have greatly limited and curtailed the amount of fat available to it for purchase, and thereby would seriously have interfered with your orator in the conducting of its business.

In this situation, your orator, about June, 1909, having found it practically impossible to conduct its business under the mode of inspection adopted by the said Bureau, refused to comply with the requirements of the Department thus made respecting the purchase of fat, and demanded that the Inspectors inspect the said fat at your orator's plant, as had been the practice prior to May, 1907. The said inspection was refused by the said Bureau, and thereupon the said Bureau withdrew its inspection from the said plant of your orator.

Ninth. That thereafter the said Baltimore & Ohio Railroad Company, acting under the regulations of the said Department of Agriculture, required your orator to label or stencil each tierce containing the said oil with the words "inedible" and to make and deliver to the Railroad Company a certificate in the following form:

13 "(Date).....,190..

Inedible Fat.

Name of common carrier.....
Consignor .....
Point of Shipment .....
Consignee .....
Destination .....

I hereby certify that the following described fat is inedible and is not intended for food purposes, and that the said fat is of such a character or is intended for such a use that denaturing is impossible or will render said fat unavailable for the desired industrial use:

Kind of Product.	Amount and Weight.
.....	.....
.....	.....
.....	.....

.....
(Signature of Shipper.)

.....
(Business or Occupation of Shipper.)

.....
(Address of Shipper.)"

14 That the said tallow oil not being in fact edible, your orator so marked the package in which the same was shipped, and made certificates in accordance with the said form, and thus conducted its business from June, 1909, until the 27th day of July, 1910, with the full knowledge of the defendant, Totten, and the inspectors and officers of the Department of Agriculture and without objection or complaint from them.

Tenth. That on July 25, 1910, your orator having sold a quantity of said tallow oil to one of its customers residing in Rotterdam, Holland, delivered a car loaded with tierces of the said oil to the said Baltimore & Ohio Railroad Company for shipment over the lines of the said Company to Baltimore, Maryalnd, and thence via steamer to Rotterdam, Holland. Thereupon, on July 27, 1910, the said defendant, Totten, claiming to act for the Department of Agriculture, as inspector in charge, notified the defendant, the Baltimore & Ohio Railroad Company, that the said shipment of tallow oil or oleo oil as an inedible product, was a violation of the Act of Congress hereinbefore mentioned, and that the same should not be forwarded in interstate commerce, and thereupon the said Railroad Company refused to transport said car of oil, and notified your orator that at the direction of the said Bureau of Animal Industry, it would not transport in interstate commerce any shipment, not only of oleo or

tallow oil, but of any other product of your orator's said plant, until the same had been inspected and determined by said Bureau, under the regulations of the Department of Agriculture, to be inedible.

That your orator thereupon filed its bill of complaint in the Circuit Court of the United States for the Western District of Penn-
15 sylvania, at No. 39 In Equity, against the defendants herein named, averring substantially the facts hereinbefore averred, and praying that the said Baltimore & Ohio Railroad Company might be required by mandatory injunction to proceed with the transportation and delivery of the said car containing the said tierces of tallow or oleo oil, and that the defendant, the said G. E. Totten, as inspector of the official station of the Bureau of Animal Industry of the Department of Agriculture at Pittsburgh, Pennsylvania, and his successors in office, and their inspectors, assistant inspectors and other employees, might be enjoined by preliminary injunction, thereafter to be made perpetual, from in any way interfering with your orator, or the said Baltimore & Ohio Railroad Company, or any other railroad company, in tendering, receiving, transporting and delivering any tallow or oleo oil manufactured by your orator and tendered by it to any of the said railroad companies for interstate or foreign shipment. That upon the filing of said Bill in Equity, the said Court issued a preliminary injunction, on August 11, 1910, in accordance with the prayer of said bill of complaint, and thereupon the said case was duly proceeded with, but was ultimately, on July 1, 1911, discontinued by reason of the disposition of a certain indictment hereinafter referred to.

Eleventh. That the said G. E. Totten, as said Inspector, caused an information to be made against your orator and William H. Womsley, its General Manager, upon which an indictment was returned in your Honorable Court, wherein it was charged that your orator and the said Womsley did, on the said 25th day of July, 1910, unlawfully offer certain edible meat food products to
16 the said Baltimore & Ohio Railroad Company for transportation from Pittsburgh to Baltimore, in the State of Maryland, and thence to Rotterdam, in the Kingdom of Holland, the said products consisting of tallow oil, commonly known and designated as oleo oil, and that the tierces in which said oil was contained had not been inspected, examined and marked as "Inspected and Passed" in accordance with the said Act of Congress, known as the Meat Inspection Amendment.

That your orator and the said Womsley having come on for trial upon the said indictment, at No. 10 Special October Term, 1910, of your Honorable Court, and the evidence adduced by the Government having been received, your Honorable Court directed a verdict of "Not guilty," and thereupon the jury returned a verdict in accordance with said direction.

That after the said disposition of the said criminal proceeding, your orator, with the consent and acquiescence of the defendants herein, caused the said bill in equity, filed as aforesaid in the Circuit Court of the United States for the Western District of Pennsylvania, at No. 39 In Equity, to be duly discontinued, upon the understand-

ing with the counsel for the said Baltimore & Ohio Railroad Company and the said G. E. Totten that the said criminal proceeding had disposed of the principal question at issue in the said equity proceeding, and that by reason thereof, there was no purpose to be served in further continuing the said equity proceeding.

Twelfth. That thereafter until January 15, 1915, your orator, without complaint or objection on the part of the defendant Totten or the said Bureau of Animal Industry, continued to ship its
17 tallow oil in interstate and foreign commerce as an inedible fat, labelling each tierce containing the same with the word "inedible" and delivering to the carrier certificates in the form hereinbefore set forth in paragraph ninth hereof.

Thirteenth. That on January 15th, 1915, your orator delivered to the said Baltimore & Ohio Railroad Company, B. & O. car numbered 14224, loaded with one hundred (100) tierces of said oil for shipment over the lines of the said Railroad Company to New York, in the State of New York, and thence by a steamer sailing from the port of New York on January 28th, 1915, to Rotterdam, Holland. The end of each of the said tierces was painted white and there was conspicuously stenciled or burned thereon, "tallow oil," the true name of the product contained therein, and also the word "inedible." At the time of the delivery of the said car to the said Baltimore & Ohio Railroad Company, your orator executed and delivered to the said Railroad Company, the following certificate:

Jan. 15th, 1915.

Inedible Fat.

Name of common carrier, Baltimore & Ohio Railroad Company.
Consignor, Pittsburgh Melting Company.
Point of shipment, Pittsburgh, Pa.
Consignee, Daniel Loeb.
Destination, Rotterdam, Holland.

I hereby certify that the following described fat is inedible and is not intended for food purposes, and that the said fat is of
18 such character or is intended for such a use that denaturing is impossible or will render said fat unavailable for the desired industrial use:

Kind of product.	Amount and weight.
Tallow	Bbls. Lbs. Gross
100 Tcs. Tallow Oil	43,000 lbs. Gross

Name of shipper,
PITTSBURGH MELTING COMPANY.

Fourteenth. That, thereupon, on January 15th, the said defendant Totten, claiming to act for the Department of Agriculture, as inspector in charge, notified the said defendant, the Baltimore & Ohio Railroad Company, not to forward the said car to New York, unless

and until your orator had complied with the following regulations governing the Meat Inspection of the United States Department of Agriculture, adopted by the Bureau of Animal Industry of said Department, and effective November 1st, 1914:

"Regulation 4—Section 6.

Paragraph 1. The proprietor or operator of each grease rendering or grease refining establishment, and of every other establishment which has not been granted inspection or exemption, which prepares or ships any article or articles derived wholly or in part from cattle, sheep, swine, or goats for interstate or foreign commerce, or in the District of Columbia, a Territory, or other place under the jurisdiction of the United States, which article or articles it is claimed
19 are not capable of being used as food by man, shall file with the Secretary of Agriculture a declaration that none of such articles are for human consumption, nor will be sold or shipped from such establishment otherwise than in compliance with these regulations, and that no article for human consumption derived wholly or in part from cattle, sheep, swine or goats will be prepared at or in such establishment or will be sold or shipped therefrom. Such establishments may be inspected at any time to ascertain whether any article derived wholly or in part from cattle, sheep, swine, or goats is prepared therein for human consumption or whether any declaration filed or offered for filing is false in any particular.

Paragraph 2. The proprietor or operator of each establishment which has been granted inspection or exemption and which prepares therein any article or articles derived wholly or in part from cattle, sheep, swine, or goats, for interstate or foreign commerce, or in the District of Columbia, a Territory, or other place under the jurisdiction of the United States, which article or articles it is claimed are not capable of being used as food by man, shall file with the Secretary of Agriculture a declaration that none of such articles are for human consumption, nor will be sold or shipped from such establishment otherwise than in compliance with these regulations.

Paragraph 3. The Secretary of Agriculture may refuse to file, or if previously filed, may withdraw from his files and cancel, any declaration which is false in any particular, or the terms of which are violated in any respect.

20 Regulation 25—Section 12.

When inedible grease or tallow or other inedible article derived wholly or in part from cattle, sheep, swine, or goats, suitable only for industrial use, is of such a nature or for such an industrial use that it is impracticable to denature the same, such product may be transported from one State or Territory or the District of Columbia to or through another State or Territory or the District of Columbia, or to any place under the jurisdiction of the United States, or to a foreign country, without denaturing, if both ends

of the containers are painted white and conspicuously stenciled or burned with the true name of the product and the word 'inedible' in letters not less than two inches high, and the other provisions of this section are complied with. The carrier shall require, and the shipper shall make and deliver to the carrier, a certificate in duplicate in the following form:

Date....., 191..

Inedible Fat.

Name of carrier.....
Consignee .....
Point of shipment.....
Consignee .....
Destination .....

I hereby certify that the following described fat is not capable of being used as food by man, is suitable only for industrial
21 purposes, is not for food purposes, and is of such character or for such a use that denaturing is impracticable. I further certify that there is now on file with the Secretary of Agriculture a declaration by the establishment in which said fat was prepared, or from which it is offered for shipment, in compliance with Section 6 of Regulation 1 of the regulations of the Secretary of Agriculture governing meat inspection.

Kind of product.	Amount and weight.
.....	.....
.....	.....
.....	.....

.....
(Signature of Shipper.)

.....
(Business or Occupation of Shipper.)

.....
(Address of Shipper.)

The signature of the shipper or of his agent shall be written in full. This certificate shall be separate and apart from any waybill, bill of lading, or other form ordinarily used in the transportation of meat. The duplicate certificate shall be forwarded immediately by the initial carrier to the Chief of the Bureau of Animal Industry, Washington, D. C.

As evidence to connecting carriers that the proper shipper's certificate is on file with the initial carrier, the waybills, trans-
22 fer slips, running slips, or conductor's cards accompanying such shipments shall have embodied therein, stamped thereon, or attached thereto a signed statement in the following form:

"Name of Transportation Company.

Inedible and suitable only for industrial purposes, as evidenced by shipper's certificate on file with initial carrier.

(Signed) .....*Agent.*

The signature of the agent shall be written in full."

Fifteenth. Your orator shows to your Honorable Court that the said oil is of such a nature that it is impracticable to denature the same without destroying its value for any purpose for which it is commercially used; that while the said oil is in fact inedible and is so labeled and specified by your orator with the purpose and intention of conveying to the public that the said oil is not a meat food product, and is intended only for industrial uses, your orator has no knowledge of what use the ultimate consumers may make thereof, nor has it any control whatever over such use, and that, by reason of said facts, your orator shows to your Honorable Court that it cannot comply with the said Regulations effective November 1st, 1914, without in some cases certifying to misstatements of facts, and in other cases to future facts over which it cannot have any control.

Sixteenth. Your orator is advised by counsel and therefore avers and charges that in the operation of its plant, and in the
23 manufacture of a product which is commercially used for industrial purposes, and which in the sale thereof your orator indicates and specifies to the public is intended only for such purposes, your orator is in no way subject to the said Act of Congress, known as the Meat Inspection Amendment or to the Regulations of the Department of Agriculture adopted thereunder; that the said Regulations hereinbefore recited with which the said Totten is endeavoring to compel your orator to comply, are unreasonable, illegal, and beyond the powers of the Department of Agriculture, or its Secretary to adopt or enforce, and that under the laws of the United States, as well as the Commonwealth of Pennsylvania, it is the duty of the Baltimore & Ohio Railroad Company, the defendant above named, to receive and to transport in inter-state and foreign commerce, the said car so tendered to the defendant by your orator for transportation.

Seventeenth. Your orator further shows to your Honorable Court that if it is prevented from shipping its said product in inter-state and foreign commerce, it will be deprived of the use of its plant in which it has invested more than One Hundred Thousand ($100,000.00) Dollars and in which it employes about forty persons, and by reason thereof it will be subject to irreparable injury and damage.

Eighteenth. That the value of the matter in controversy, exclusive of interest and costs, exceeds the sum of Three Thousand ($3,000.00) Dollars, and that your orator is without any adequate remedy at law.

24 *For to such* as your orator can have no adequate relief except in this Court, and to the end therefore that the de-

fendants may, if they can, show why your orator should not have the relief prayed for, and may make a full disclosure and discovery of all the matters aforesaid, according to the best and utmost of their knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters herein stated and charged; but not under oath, an answer under oath being hereby expressly waived.

That the defendant, the said Baltimore & Ohio Railroad Company, may be decreed by mandatory injunction, to proceed with the transportation and delivery of the tierces of oil hereinbefore described and heretofore delivered to it for shipment by way of its railroad to New York in the State of New York, for delivery to the connecting carrier of the said Baltimore & Ohio Railroad Company for shipment to Rotterdam, Holland.

That the defendant, the said G. E. Totten, as Inspector of the Bureau of Animal Industry of the Department of Agriculture, at Pittsburgh, Pennsylvania, and his successor in office, and his or their assistant inspectors, and other employes, be, by preliminary injunction, hereafter to be made perpetual, enjoined from in any way interfering with your orator, the said Baltimore & Ohio Railroad Company or any other railroad company in tendering, receiving, transporting or delivering any oleo or tallow oil manufactured by your orator and tendered by it to any of the said railroad companies for interstate or foreign shipment.

That it may be ordered, adjudged and decreed that the defendant, the said Baltimore & Ohio Railroad Company shall receive
25 from your orator for transportation in interstate and foreign commerce any and all oleo or tallow oil manufactured by it and duly tendered to said defendant company for such transportation.

And your orator further prays for such other, further or different relief as to your Honors may seem meet and the exigencies of the case may require.

May it please your Honors to grant unto your orator not only a writ of injunction conformable to the prayers of this bill, but also a writ of subpœna of the United States of America directed to the said Baltimore & Ohio Railroad Company and the said G. E. Totten, Inspector of the Bureau of Animal Industry of the Department of Agriculture, commanding them, and each of them, on a day certain to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the Court shall seem proper and required by the principles of equity and good conscience.

PITTSBURGH MELTING COMPANY.
[SEAL.] By HAY WALKER, JR., *Treasurer.*

SAMUEL McCLAY,
WM. M. ROBINSON,
REED, SMITH, SHAW & BEAL,
Solicitors for Plaintiff.

26 UNITED STATES OF AMERICA,
Commonwealth of Pennsylvania,
County of Allegheny, ss:

On this 19th day of January, A. D., 1915, before me, a Notary Public in and for said County and Commonwealth, personally appeared Hay Walker, Jr., who, being duly sworn, deposes and says that he is President of the Pittsburgh Melting Company, the plaintiff above named, and familiar with its business; that he has read the foregoing bill of complaint and knows the contents thereof, and that the averments of fact therein contained are true and correct.

HAY WALKER, JR.

Sworn and subscribed before me the day and year aforesaid.
[SEAL.] ALLEN H. KERR,
Notary Public.

My commission expires Feb. 21, 1915.

27 *Order for Preliminary Injunction.*

Filed January 20, 1915.

And now, to-wit, January 20, 1915, this cause came on for hearing on motion of plaintiff for preliminary injunction, and was argued by counsel for the respective parties, and upon consideration thereof, the Court being of the opinion that Section 6 of Regulation 4, and Section 12 of Regulation 25, of the regulations governing meat inspection of the United States Department of Agriculture, effective November 1st, 1914, are unreasonable and void, because they seek to compel a manufacturer and shipper of tallow oil which is not intended for food purposes and is sold and offered for shipment as an inedible product, to certify that the said product is not capable of being used as a food for man, and it appearing to the Court that the plaintiff will be seriously interfered with in the operation of its plant and will suffer irreparable damage and injury if it is prevented from shipping its tallow oil in inter-state and foreign commerce unless it comply with the said regulations, it is ordered that, until the further order of this Court.

First. The defendant, G. E. Totten, Inspector of the Bureau of Animal Industry of the Department of Agriculture, and his successor or successors in office, and his and their assistants, agents and employes, be and they are hereby restrained and enjoined from in any manner interfering with the plaintiff and the said Baltimore & Ohio Railroad Company, or either of them, in tendering, receiving, transporting or delivering any tallow oil manufactured
28 by the plaintiff for interstate or foreign shipment, in containers, both ends of which are painted white and conspicuously stenciled or burned with the name "tallow oil" and the word "inedible" in letters not less than two inches high, and the said Totten is hereby required to withdraw any notice or direction here-

tofore issued or given by him to the said Baltimore & Ohio Railroad Company with respect to the shipment of one hundred tierces of tallow oil, said tierces being labeled or stenciled in the manner hereinbefore set forth.

Second. The defendant, the Baltimore & Ohio Railroad Company, be and is hereby required and enjoined, upon payment by the plaintiff to the railroad company of its proper charges therefor, to receive from the plaintiff and to transport and deliver the one hundred tierces of tallow oil heretofore tendered to it on January 15th, 1915, for shipment to New York and thence by steamer to Rotterdam, Holland, and also to receive and transport all tallow oil manufactured by the plaintiff and tendered by the plaintiff to the said railroad company for shipment in interstate and foreign commerce, contained in containers labeled and stenciled in the manner hereinbefore set forth.

Bond in the sum of Five Thousand ($5,0000.00) Dollars, with sureties to be approved by the Court.

PER CURIAM.

29 *Answer of G. E. Totten.*

Filed February 9, 1915.

To the Honorable the Judges of said Court:

This defendant, G. E. Totten, now and at all times hereafter saving to himself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, says:

First. This defendant believes that the averments contained in the first paragraph of plaintiff's bill are true.

Second. This defendant admits that the averments contained in the second paragraph of plaintiff's bill are true.

Third. This defendant admits that the averments contained in the third paragraph of plaintiff's bill are true.

Fourth. This defendant admits that tallow oil is a product derived from the fat of slaughter beef cattle and is used for the manufacture of soap and for other industrial purposes, as alleged by plaintiff in the fourth paragraph of said bill. Defendant avers, however, that tallow oil is a common meat food product prepared for human consumption; that it is largely used as a component of oleomargarine, and that it enters into the composition of other food products for human consumption.

30 And this defendant, further answering said paragraph, states that the averments contained therein as to tallow oil being used in the manufacture of soap, and for other industrial purposes, are immaterial to any right or issue involved in this cause and constitute no ground for the relief prayed for in the bill, and ought to be stricken from the bill and disregarded by the court, and defendant so moves the court.

Fifth. This defendant, for answer to the fifth paragraph of the bill, avers that he is without knowledge as to whether the business of manufacturing tallow oil has been carried on by plaintiff and its predecessors at its said plant for more than seventy years. Defendant, further answering said paragraph, admits that plaintiff has shipped large quantities of tallow oil by way of the railroad of the Baltimore & Ohio Railroad Company and the line of steamers sailing regularly from New York City to Rotterdam, Holland. Defendant, further answering, states that the averments of plaintiff as to said plaintiff's knowledge or control of the use to which the said tallow oil is put, as contained in said fifth paragraph, are immaterial to any issue involved in this cause and furnish no ground for the relief prayed for and ought to be stricken from the bill and disregarded by the court, and the defendant so moves the court.

Sixth. This defendant admits that the averments contained in the sixth paragraph of said bill are substantially true, except that defendant denies that the system of inspection adopted by defendant in plaintiff's plant was less rigorous than the system theretofore established and maintained by plaintiff.

31 Seventh. This defendant, for answer to the seventh paragraph of said bill, admits that the Department of Agriculture adopted a regulation discontinuing the mode of inspection maintained in plaintiff's plant prior to May 10, 1907, and required plaintiff to use, in the manufacture of tallow oil, fat obtained from animals slaughtered at establishments in which inspection was maintained by the Department of Agriculture under the provisions of the Meat Inspection Act, as averred by plaintiff in said paragraph. Answering said paragraph further, this defendant admits that the mode of inspection adopted by the Department of Agriculture in plaintiff's plant required the driver of each wagon delivering fat to plaintiff's plant to obtain from each person from whom he procured such fat, and to deliver to the Department's inspector, a certificate stating that the fat was from the carcasses of beef cattle which had been slaughtered at one of the establishments in which inspection was maintained by the Department of Agriculture under the provisions of said Meat Inspection Act, as alleged by plaintiff. Answering said paragraph further, this defendant denies that the only service performed by the Department's inspector was to ascertain that the total weight of fat on plaintiff's wagon corresponded to the total weight of fat as shown on certificate, or that no inspection was made of the fat itself, as so delivered, or that no inspection was made of the tallow oil, either in the process of manufacture, or as finally prepared for shipment.

Defendant further denies that the regulations of the Department of Agriculture, or its mode of inspection adopted in pursuance thereof, were enforced upon plaintiff from time to time with

32 increasing rigor, or that plaintiff was prohibited by the Bureau of Animal Industry from purchasing and using in the manufacture of tallow oil the fat of animals slaughtered at establishments other than those in which inspection was maintained under the provisions of the said Meat Inspection Act. Defendant

avers that the regulations of the Secretary of Agriculture did not prohibit the plaintiff from purchasing and using in the manufacture of tallow oil the fat of animals slaughtered at other than official establishments, but that the regulations of the Secretary of Agriculture required that fats used in tallow oil, prepared under Federal inspection, should be derived from carcasses of animals which had been inspected and passed, and so marked, under Federal supervision, and that therefore it was entirely optional with plaintiff whether it would conduct its plant under inspection in compliance with the requirements of the Meat Inspection Act and the regulations prescribed thereunder. Defendant further denies that the Bureau of Animal Industry established a so-called "Black List" of prohibited dealers from whom plaintiff was prohibited by the said Department from purchasing any fat whatsoever.

And this defendant, further answering said paragraph, states that the averments contained therein are wholly immaterial to any right or issue involved in this cause, and constitute no ground for the relief prayed for in the bill, and ought to be stricken from the bill and disregarded by the court, and defendant so moves the court.

Eighth. This defendant, for answer to the eighth paragraph of said bill, states that he is without knowledge regarding the
33 averments contained therein, and, therefore, neither admits nor denies the said averments of plaintiff, except defendant admits that the Department of Agriculture withdrew inspection from plaintiff's plant.

And this defendant, further answering said paragraph, states that the averments contained therein are immaterial to any right or issue involved in this cause and constitute no ground for the relief prayed for in the bill, and ought to be stricken from the bill and disregarded by the court, and defendant so moves the court.

Ninth. This defendant, for answer to the ninth paragraph of said bill, states that he is without knowledge as to the averments of plaintiff that the Baltimore and Ohio Railroad Company required plaintiff to label or stencil each tierce containing the said tallow oil with the word "Inedible," or that the said Baltimore and Ohio Railroad Company required plaintiff to make and deliver to the said railroad company a certificate in form as therein set forth.

Answering said paragraph further, defendant denies that the said tallow oil was in fact inedible as averred by plaintiff, but, on the contrary, defendant avers that the said tallow oil was edible and that plaintiff did not denature it or in any other manner render it inedible.

And this defendant, further answering said paragraph, states that the averments contained therein are immaterial to any right or issue involved in this cause and constitute no ground for the relief prayed for in the bill, and ought to be stricken from the bill and disregarded by the court, and defendant so moves the
34 court.

Tenth. This defendant admits that the allegations contained in the tenth paragraph of said bill are substantially true,

except that the defendant denies that he notified the Baltimore and Ohio Railroad Company in 1910 that the shipment of said tallow oil was in violation of the Meat Inspection Amendment upon the ground that such tallow oil was an inedible product. Further answering this paragraph this defendant avers that the ground on which he gave notice to the Baltimore & Ohio Railroad Company that said shipment was in violation of the Meat Inspection Amendment, was that said tallow oil was an edible product.

And this defendant, further answering said paragraph, states that the averments contained therein are immaterial to any right or issue involved in this cause and constitute no ground for the relief prayed for in the bill, and ought to be stricken from the bill and disregarded by the court, and defendant so moves the court.

Eleventh. This defendant admits that the averments contained in the eleventh paragraph of plaintiff's bill are substantially true, except that defendant denies that the dismissal of the bill in equity at No. 39 In Equity in the Circuit Court of the United States for the Western District of Pennsylvania was with the consent and acquiescence of the defendant herein.

And this defendant, further answering said paragraph, states that the averments contained therein are immaterial to any right or issue involved in this cause and constitute no ground for the relief prayed for in the bill, and ought to be stricken from the bill and disregarded by the court, and defendant so moves the court.

35 Twelfth. This defendant admits that the averments contained in the twelfth paragraph of plaintiff's bill are substantially true.

Further answering said paragraph, defendant avers that the Secretary of Agriculture on July 15, 1914, promulgated and adopted new regulations governing the inspection of meat and meat food products under the Act of June 30, 1906, commonly called the Meat Inspection Amendment; that said regulations became effective on November 1, 1914; that subsequent to said last mentioned date and prior to January 15, 1915, plaintiff made but one inter-State shipment of tallow oil; that said shipment, consisting of 200 tierces of tallow oil, was made on November 7, 1914, and was originally consigned to Daniel Loeb, Rotterdam, Holland, but later diverted and consigned to "Notify Ove Haugstead, Copenhagen, Denmark;" and that said shipment was made without the knowledge or consent of defendant.

This defendant, further answering said paragraph, states that the averments contained therein are immaterial to any right or issue involved in this cause and constitute no ground for the relief prayed for in the bill, and ought to be stricken from the bill and disregarded by the court, and defendant so moves the court.

Thirteenth. This defendant, for answer to paragraph thirteen of said bill, admits that the averments contained in the thirteenth paragraph of plaintiff's bill are substantially true, except that defendant denies that the said certificate, set forth in said paragraph, was delivered by plaintiff to the said Baltimore & Ohio Railroad

Company on January 15, 1915. On the contrary, defendant
36 avers that said certificate was not delivered to the said Baltimore & Ohio Railroad Company until January 20, 1915, and that the car containing said tallow oil was forwarded by said railroad company from Pittsburgh, Pennsylvania, to New York, N. Y., on January 15, 1915, and was transported in inter-State commerce to its destination, mentioned in said paragraph, prior to January 20, 1915, and all the transportation of said tallow oil by said railroad company was fully performed prior to the receipt by it of said certificate.

Fourteenth. This defendant, for answer to paragraph fourteen of said bill, denies each and every allegation thereof. Further answering said paragraph, this defendant avers that in compliance with his official duty he called the attention of the said railroad company to the requirements of the said regulations, a copy of which was already in said company's possession, and a copy of which will be produced and submitted to the court at the trial of this cause.

Fifteenth. This defendant, for answer to the fifteenth paragraph of said bill, denies that the said tallow oil is of such a nature that it is impracticable to denature the same without destroying its value for any purpose for which it is commercially used, or that the said oil is, in fact, inedible. Further answering, defendant disclaims any knowledge that plaintiff labeled said oil "Inedible" for the purpose or intention of informing the public that said oil was not a meat food product, or that it was intended only for industrial use, as alleged in said paragraph. Further answering,
37 defendant neither admits nor denies that plaintiff had no knowledge of what use the ultimate consumer may make of said tallow oil, or that plaintiff has no control over such use, as alleged in said paragraph. Further answering, defendant denies that plaintiff could not comply with the regulations of the Secretary of Agriculture governing meat inspection, effective November 1, 1914, without, in some cases, certifying to misstatements of facts, or in other cases certifying to future facts over which plaintiff could have no control.

This defendant, further answering said paragraph, avers that it is practicable to denature tallow oil without destroying its value for industrial uses. Defendant further avers that said tallow oil was in fact edible; that tallow oil is a common food product prepared for human consumption and is largely used as a component of oleomargarine and enters into the composition of other food products; and that to the best of defendant's information and belief it has been, in the past, the practice of plaintiff to ship tallow oil in inter-State and foreign commerce for use as human food.

And this defendant, further answering said paragraph, states that the averments contained therein are immaterial to any right or issue involved in this cause and constitute no ground for the relief prayed for in the bill, and ought to be stricken from the bill and disregarded by the court, and defendant so moves the court.

Sixteenth. This defendant, for answer to the sixteenth paragraph of said bill, denies each and every allegation thereof.

And this defendant, further answering said paragraph, avers that said tallow oil is an edible product prepared for human con-
38 sumption; that tallow oil is a common food product prepared for human consumption, and is largely used as a component of oleomargarine and enters into the composition of other food products. Defendant further avers that plaintiff manufactures products for inter-State and foreign commerce which are derived from the carcasses of cattle, sheep, swine, and goats; that said products are capable of being used as food by man, and are prepared for human consumption, and by reason thereof, plaintiff's said plant is subject to the said Act of Congress known as the Meat Inspection Amendment, and the regulations adopted thereunder. Defendant further avers that the said regulations of the Secretary of Agriculture are reasonable, legal and within the power of the said Secretary of Agriculture to adopt and enforce; that said regulations prohibit the inter-State or foreign movement of tallow oil which is capable of being used as food by man, unless said product has been inspected and passed and so marked under Federal supervision; that it was not the duty of the Baltimore and Ohio Railroad Company, one of the defendants above named, to receive for transportation or to transport the said tallow oil tendered to it by plaintiff for transportation in inter-State or foreign commerce.

This defendant, further answering said paragraph, avers that the said tallow oil was tendered to the said Baltimore and Ohio Railroad Company for transportation to Holland by way of the line of steamers sailing regularly between New York, New York, and Rotterdam, Holland, and that the said tallow oil was received for transportation and actually transported by the said railroad com-
39 pany from Pittsburgh, Pennsylvania, to New York, New York, prior to the day on which the bill in this cause was filed.

Further answering said paragraph, this defendant states that under the Meat Inspection Amendment, the Secretary of Agriculture is specifically authorized to make such rules and regulations as are necessary for the efficient execution of the provisions of said Act; that the purpose of said Act, as expressed therein, is to prevent the use in inter-State and foreign commerce of meat and meat food products derived from the carcasses of cattle, sheep, swine and goats, which are unsound, unwholesome, unhealthful, or otherwise unfit for human food; that in order to prevent the use in inter-State or foreign commerce of unsound and unwholesome meat and meat food products, it is essential that the Secretary of Agriculture shall establish inspection or maintain supervision over all establishments which prepare products derived from cattle, sheep, swine and goats for inter-State or foreign commerce; that to effectuate such purpose it is absolutely essential that edible products shall be segregated from inedible products, as in many cases it is impossible to distinguish in appearance and characteristics the inedible from the edible products; that the regulations promulgated by the Secretary of Agriculture, providing for the inpection or maintenance of

supervision over all products derived from cattle, sheep, swine, and goats prepared for inter-State or foreign movement and the segregation of the edible products from the inedible products, are only such as are necessary to give effect to the purpose of the law, and that without such regulations there could be no efficient execution of the duties imposed upon the Secretary of Agriculture by the terms of the Statute.

40 Seventeenth. This defendant, for answer to paragraph seventeen of said bill, denies that if plaintiff is prevented from shipping its said product in inter-State or foreign commerce, plantiff will be deprived of the use of its plant, or that plaintiff will suffer irreparable injury or damage.

This defendant, further answering said paragraph, avers that if plaintiff prepares and ships its product in compliance with the regulations of the Secretary of Agriculture governing the inspection of meat and meat food products, plaintiff will be subject to no injury or damage.

And this defendant, further answering said paragraph, states that the averments contained therein are immaterial to any right or issue involved in this cause and constitute no ground for the relief prayed for in the bill, and ought to be stricken from the bill and disregarded by the court, and defendant so moves the court.

Eighteenth. This defendant believes that the averments contained in the eighteenth paragraph of said bill are true.

For further answer to plaintiff's bill of complaint, this defendant avers that he was acting in the premises in accordance with the Act of Congress approved June 30, 1906, commonly known as the Meat Inspection Amendment, and the supplements and amendments thereto, and with the regulations of the Secretary of Agriculture duly adopted and promulgated by the Secretary of Agriculture on July 15, 1914, effective November 1, 1914; that the said tallow oil described in complainant's bill of complaint was a meat food product, and that the shipment thereof in inter-State or

41 foreign commerce constituted a violation of said Act of Congress and said regulations made in pursuance thereof.

Wherefore, this defendant having demurred to complainant's bill of complaint and having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint according to his best knowledge and belief and having shown that complainant's bill of complaint discloses no equity, prays this Honorable Court to enter its decree that the preliminary injunction heretofore granted in the above entitled case be dissolved, and that this defendant be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

E. LOWRY HUMES,
U. S. Attorney for Defendant, G. E. Totten.

UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

Before the undersigned authority personally appeared G. E. Totten, who, being duly sworn, deposes and says that he is one of the

defendants named in the bill of the Pittsburgh Melting Company filed at above number and term; that the averments contained in the foregoing answer so far as they are within his own knowledge are correct and true; that so far as they are alleged upon information and belief he believes them to be true.

G. E. TOTTEN.

Sworn and subscribed before me this 9th day of February, A. D. 1915.

B. D. GAMBLE,
Deputy Clerk.

42 *Replication of Pittsburgh Melting Company to the Answer of G. E. Totten, One of the Defendants.*

Filed March 11, 1915.

And now comes Pittsburgh Melting Company, plaintiff in the above cause, and replying to the answer of G. E. Totten, one of the defendants, filed herein, says that, saving and reserving all manner of exceptions to the insufficiency of the said answer, for replication thereto doth say that its bill is sufficient and true as averred, and that it is ready to prove it, and that the answer of the said defendant, the said G. E. Totten, is untrue and insufficient.

Wherefore it prays relief as set forth in its original bill.

SAMUEL McCLAY,
WM. M. ROBINSON,
REED, SMITH, SHAW & BEAL,
Solicitors for Plaintiff.

43 *Testimony.*

In the District Court of the United States for the Western District of Pennsylvania, May Term, 1915.

In Equity.

No. 12.

PITTSBURGH MELTING COMPANY
vs.
BALTIMORE & OHIO RAILROAD COMPANY and G. E. TOTTEN, Inspector of the Bureau of Animal Industry of the Department of Agriculture.

Tried Before Honorable Charles P. Orr, J., at Pittsburgh, Pa., Wednesday, July 7, 1915.

Appearances:

Messrs. Reed, Smith, Shaw & Beal, Sam'l McClay, Esq., Wm. M. Robinson, Esq., for Plaintiff.

E. Lowry Humes, Esq., B. M. Price, Esq., for Defendants.

44 *Plaintiff's Case.*

By Mr. Robinson: We offer in evidence the following averments of the Bill of Complaint, admitted by the Answer, that is, admitted within the meaning of the rule, viz:

"First. That your orator, the Pittsburgh Melting Company, is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania; that the Baltimore & Ohio Railroad Company, one of the defendants, is a corporation organized and existing under the laws of the State of Maryland; and that G. E. Totten, the other defendant, is an inspector assigned by the Bureau of Animal Industry of the Department of Agriculture to supervise official work at the official station of said Bureau at Pittsburgh, in the Commonwealth of Pennsylvania, and as such official he has under his supervision and direction a number of inspectors, inspectors' assistants and other employees of said Bureau."

"Second. That your orator owns and operates a manufacturing plant in the City of Pittsburgh, in the Commonwealth of Pennsylvania, which is connected by means of a railroad switch or siding with the railroad of the said Baltimore & Ohio Railroad Company, at which plant among other products your orator manufactures tallow oil, sometimes known as oleo oil."

"Third. That the said Baltimore & Ohio Railroad Company maintains and operates a railroad which, among other places, ex-
45 tends from the City of Pittsburgh, in the Commonwealth of Pennsylvania, to the City of New York in the State of New York, where it is connected with a line of steamers sailing regularly for Rotterdam, Holland, and by said railroad, it is now, and for many years has been, engaged in the transportation of persons and property in interstate commerce between said points. That it has a through route for the shipment of tallow oil from the said City of Pittsburgh to Rotterdam, Holland, and has heretofore from time to time received and transferred tallow oil by such route from the said plant of your orator in the City of Pittsburgh, Pennsylvania, by way of its said railroad to New York, and thence by way of said line of steamers to Rotterdam, Holland."

"Fourth. That tallow oil is the product of the fat of slaughtered beef cattle and is used in the manufacture of soap and for other industrial purposes."

"Fifth. That during recent years your orator has been shipping large quantities of such oil by way of the railroad of said Baltimore & Ohio Railroad Company and the steamers, hereinbefore referred to, to its customers at Rotterdam, Holland, and the use made thereof is entirely determined by your orator's said customers, and of and over such use your orator has no knowledge or control whatever."

"Sixth. That on or shortly after October 1, 1906, at which time the Act of Congress commonly known as the Meat Inspection Amendment contained in the Act of Congress entitled, 'An Act making appropriations for the Department of Agriculture for the fiscal year

ending June thirtieth, nineteen hundred and seven,' approved
46 June 30, 1906, went into effect, the Department of Agriculture, claiming to act under the authority of the said Act of Congress, established at the said plant of your orator a system of inspection whereby the entire operation of your orator's plant was under the direction of an inspector assigned by the Bureau of Animal Industry, one of the Bureaus of the said Department of Agriculture, to supervise its official work at its official station at Pittsburgh, Pennsylvania, and of such assistant inspectors as said chief inspector should from time to time designate. Thereafter until on or about June 26, 1909, no operations of your orator at said plant were carried on by day or night except under the direct supervision of such inspector or inspectors, to whom your orator was required to furnish, free of charge, an office, including light and heat. That the mode of inspection carried on by such inspector or inspectors at your orator's said plant until about May, 1907, was as follows:

The fat from which the tallow oil is manufactured by your orator is collected by wagons which visit various establishments in Allegheny County, in the Commonwealth of Pennsylvania, where beef cattle are slaughtered or slaughtered animals are sold for meat, and as the fat was delivered to your orator's said plant by such wagons, the inspector inspected it by looking at and smelling it. Subsequently during the process of manufacture the inspector made observations as to the temperature maintained in boiling the fat. Again when the oil was ready for shipment it was inspected by the inspector by tasting and smelling it.

In addition to the inspection of the product itself the inspector maintained a general supervision over the condition of the
47 floors, kettles and other utensils of the plant.

Notwithstanding your orator was advised that its said plant was not subject to the provisions of the said Act of Congress known as the Meat Inspection Amendment, your orator very willingly acceded to the said inspection because the mode of inspection adopted thereunder was reasonable."

"Seventh. That on or about May 10, 1907, your orator was informed by the said Bureau of Animal Industry, through its local official station, that the Department of Agriculture had adopted a regulation whereby the mode of inspection theretofore maintained at your orator's said plant would be discontinued, and whereby your orator thereafter would not be permitted to use, in the manufacture of tallow oil, fat obtained from animals slaughtered at other than official establishments as determined by the regulations of the said Department, such establishments being those at which official inspection under the said Act of Congress was maintained. That the mode of inspection adopted by the said Bureau of Animal Industry, pursuant to the said regulation of the Department of Agriculture was as follows: The driver of each wagon delivering fat to your orator's said plant, was required to obtain from each person from whom he obtained said fat, and to deliver to the Bureau's inspector, a certificate stating that the fat was from the carcasses of beef cattle which had been slaughtered at one of said official establishments."

"Eighth. Your orator so marked (that is, with the word 'edible') the package in which the same was shipped (tallow oil), and
48 made certificates in accordance with the said form, and thus conducted its business from June, 1909, until the 27th day of July 1910, with the full knowledge of the defendant, Totten, and the inspectors and officers of the Department of Agriculture and without objection or complaint from them," the said form being as follows:

"(Date) ....., 190..

Name of common carrier .....
Consignor .....
Point of shipment .....
Consignee .....
Destination .....

I hereby certify that the following described fat is inedible and is not intended for food purposes, and that the said fat is of such a character or is intended for such a use that denaturing is impossible or will render said fat unavailable for the desired industrial use.

Kind of Product.	Amount and Weight.
.....	.....
.....	.....
.....	.....

.....
(Signature of Shipper.)

.....
(Business or Occupation of Shipper.)

.....
(Address of Shipper.)"

"Ninth. That on July 25, 1910, your orator having sold a quantity of said tallow oil to one of its customers residing in Rotterdam, Holland, delivered a car loaded with tierces of the said
49 oil to the said Baltimore & Ohio Railroad Company for shipment over the lines of the said Company to Baltimore, Maryland, and thence via steamer to Rotterdam, Holland. Thereupon, on July 27, 1910, the said defendant, Totten, claiming to act for the Department of Agriculture, as inspector in charge, notified the defendant, the Baltimore & Ohio Railroad Company, that the said shipment of tallow oil or oleo oil as an ediable product, was a violation of the Act of Congress hereinbefore mentioned, and that the same should not be forwarded in interstate commerce, and thereupon the said Baltimore & Ohio Railroad Company refused to transport said car of oil, and notified your orator that at the direction of the said Bureau of Animal Industry, it would not transport in interstate commerce any shipment, not only of oleo or tallow oil, but of any

other product of your orator's said plant until the same had been inspected and determined by said Bureau, under the regulations of the Department of Agriculture, to be inedible. That your orator thereupon filed its bill of complaint in the Circuit Court of the United States for the Western District of Pennsylvania, at No. 39 In Equity, against the defendants, herein named, averring substantially the facts hereinbefore averred, and praying that the said Baltimore & Ohio Railroad Company might be required by mandatory injunction to proceed with the transportation and delivery of the said car containing the said tierces of tallow or oleo oil, and that the defendant, the said G. E. Totten, as inspector of the Department of Agriculture at Pittsburgh, Pennsylvania, and his successors in office, and their inspectors, assistant inspectors and other employees,
50 might be enjoined by preliminary injunction, thereafter to be made perpetual, from in any way interfering with your orator, or the said Baltimore & Ohio Railroad Company, or any other railroad company, in tendering, receiving, transporting and delivering any tallow or oleo oil manufactured by your orator and tendered by it to any of the said railroad companies for interstate or foreign shipment. That upon the filing of said Bill in Equity, the said Court issued a preliminary injunction, on August 11, 1910, in accordance with the prayer of said Bill of Complaint, and thereupon the said case was duly proceeded with, but was ultimately, on July 1, 1911, discontinued by reason of the disposition of a certain indictment hereinafter referred to."

"Tenth. That the said G. E. Totten, as said inspector, caused an information to be made against your orator and William H. Womsley, its general manager, upon which an indictment was returned in your Honorable Court, wherein it was charged that your orator and the said Womsley did, on the said 25th day of July, 1910, unlawfully offer certain edible meat food prducts to the said Baltimore & Ohio Railroad Company for transportation from Pittsburgh to Baltimore, in the State of Maryland, and thence to Rotterdam, in the Kingdom of Holland, the said products consisting of tallow oil, commonly known and designated as oleo oil, and that the tierces in which said oil was contained had not been inspected, examined and marked as 'inspected and Passed' in accordance with the said Act of Congress, known as the Meat Inspection Amendment.
That your orator and the said Womsley having come on for
51 trial upon the said indictment, at No. 10 Special October Term, 1910, of your Honorable Court, and the evidence adduced by the Government having been received, your Honorable Court directed a verdict of 'Not Guilty,' and thereupon the jury returned a verdict in accordance with said direction. That after the said disposition of the said criminal proceeding, your orator caused the said bill in equity, filed as aforesaid, in the Circuit Court of the United States for the Western District of Pennsylvania, at No. 39 In Equity, to be duly discontinued, upon the understanding with the counsel for the said Baltimore & Ohio Railroad Company and the said G. E. Totten, that the said original proceeding had disposed of the principal question at issue in the said equity proceeding,

and that by reason thereof, there was no purpose to be served in further continuing the said equity proceeding."

"Eleventh. That thereafter until January 15, 1915, your orator, without complaint or objection on the part of the defendant Totten or the said Bureau of Animal industry, continued to ship its tallow oil in interstate and foreign commerce as an inedible fat, labeling each tierce containing the same with the word 'inedible' and delivering to the carrier certificates in following form, viz:

"(Date) ....., 190..

Name of common carrier .....
Consignor .....
Point of shipment .....
Consignee .....
Destination .....

I hereby certify that the following described fat is inedible and is not intended for food purposes, and that the said fat is of
52 such a character or is intended for such a use that denaturing is impossible or will render said fat unavailable for the desired industrial use.

Kind of Product.	Amount and Weight.
.....	.....
.....	.....

..... (Signature of Shipper.)

..... (Business or Occupation of Shipper.)

..... (Address of Shipper.)"

"Twelfth. That on January 15th, 1915, your orator delivered to the said Baltimore & Ohio Railroad Company, B. & O. car numbered 14224, loaded with one hundred (100) tierces of said oil for shipment over the lines of the said Railroad Company to New York, in the State of New York, and thence by a steamer sailing from the port of New York on January 28th, 1915, to Rotterdam, Holland. The end of each of said tierces was painted white and there was conspicuously stenciled or burned thereon, 'tallow oil,' the true name of the product contained therein, and also the word 'inedible.' On January 20th, 1915, your orator executed and delivered to the said Railroad Company the following certificate:

53 "Jan. 15th, 115.

Inedible Fat.

Name of common carrier, Baltimore & Ohio Railroad Company.
Consignor, Pittsburgh Melting Company.
Point of shipment, Pittsburgh, Pa.
Consignee, Daniel Loeb.
Destination, Rotterdam, Holland.

I hereby certify that the following described fat is inedible and is not intended for food purposes, and that the said fat is of such character or is intended for such a use that denaturing is impossible or will render said fat unavailable for the desired industrial use.

Kind of Product.		Amount and Weight.
Tallow.	Bbls.	Lbs. Gross.
100 Tcs. Tallow Oil.		44,300 lbs. Gross.

Name of Shipper,
PITTSBURGH MELTING COMPANY."

"Thirteenth. That the value of the matter in controversy, exclusive of interest and costs, exceeds the sum of three thousand dollars, and that your orator is without an adequate remedy at law."

54 *Testimony of Hay Walker, Jr.*

HAY WALKER, Jr., a witness called on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct examination by Mr. McClay:

Q. Where do you live?
A. Leetsdate, Pa.
Q. How long have you lived in Allegheny County?
A. All my life.
Q. You are a member of the firm of W. & H. Walker?
A. Yes, sir.
Q. Soap manufacturers?
A. Yes.
Q. Are you in any way connected with the Pittsburgh Melting Company?
A. I am the treasurer.
Q. How long have you been connected with the Pittsburg Melting Company?
A. Ever since it was formed.
Q. That was about what year?
A. About 1880 or 1879, along in there.
Q. Have you had any experience in the making of tallow oil?
A. I have. I have been at it all my life.
Q. Were the predecessors of your firm engaged in it before you took charge?
A. Yes; for seventy-eight years we have been at it.
55 Q. What product does the Pittsburgh Melting Company manufacture?
A. They manufacture tallow oil and tallow stearine, greases, tallow and No. 2 tallow.
Q. Cracklings?
A. And Cracklings.
Q. And stock?
A. And stock.

Q. What is stock?
A. It is just a tallow.
Q. What is the nature of tallow oil?
A. Tallow oil is the beef fat melted and separated—the soft parts are separated from the hard part; the hard part is called stearine and the soft part oil. It is about the consistency of lard.
Q. To what uses can tallow oil be applied?
A. For soap, for lubricating, and we sell some to glue manufacturers, tanners; almost any purpose of that kind.
Q. Do you sell this to soap manufacturers?
A. We do.
Q. What firms?
A. We sold to Fairbanks, W. & H. Walker, Hasley & Sons.
Q. Anybody else,—Colgate?
A. I don't remember of selling any to Colgate. We may have.
Q. Do you know Fels & Company?
A. Yes. We sell some to Fels & Company.
Q. What is their business.
A. Soap manufacturers.
Q. Swift & Company—do you know anything about them?
56 A. We sell them. I don't know whether we sold them this oil or not. We sell them.
Q. Do you sell any to the railroad companies.
A. Some.
Q. To oil companies?
A. Yes.
Q. Do you sell any to the Westinghouse Airbrake Company?
A. We have sold some, yes. We do sell them.
Q. Do you sell any to the steel companies?
A. I think we do, but I couldn't answer that. I don't remember.
Q. Is tallow oil used in a fine grade of soap?
A. Yes.
Q. What effect has the purity of the oil upon the soap?
A. Well, in making a fine soap it is important to have an oil without taste or smell, and a good color. That is what is the standard for soap making.
Q. Is tallow oil used in the manufacture of tooth pastes and powders?
A. The soap that is made from the tallow oil is used in that way. It is first made into soap and then used in tooth paste and toilet soap and shaving soap, and everything of that kind.
Q. For industrial purpose, for sale to railroads, what effect does age or impurities have upon the tallow oil, for the purpose of sale to railroads?
A. Well, if the raw fat is decomposed, commences to spoil, it creates an acid in the tallow or the tallow oil, and if that is used in the cylinders of a locomotive or for any machinery, the fatty acid
57 eats the iron, or the steel in the cylinder and it is very injurious to the iron. The railroads buy their stuff on an acid test on that account.

Q. Allowing it to become impure by age and contact with the air, and so forth, produces acid, does it?

A. Yes, the stearine decomposes and that releases the fatty acid.

Q. The stearine,—what is that used for?

A. That is used by tanners largely. They make a dub with it. It is very hard, and they take fish oil and stiffen it with stearine and then smear it on the hides, and hang it in a warm room and the hides absorb the oil, and leaves the stearine on the outside. They melt it over again and put some more on. That is called dubbing, for use for leather.

Q. Do you have a sale for stearine among tanners?

A. Yes, we sell all our stearine to tanners.

Q. What is tallow used for?

A. It is used largely for soap making and for lubricating.

Q. Stock,—what is that?

A. That is just a sweet tallow. That contains the stearine. That is the melted fat with the stearine. It is just a sweet tallow.

Q. And cracklings?

A. Cracklings, that is the fibre from the fat. It is used for dog feed largely and chicken feed, ground up, and these dog biscuits are made partly of cracklings.

Q. Now, the fat from which you obtain this tallow oil and so forth, where do you procure that?

A. We procure it from the butchers, retail and wholesale butchers, mostly retail. We have wagons going around from shop to shop, gathering it.

58 Q. That is, you obtain it from the retail butchers of Western Pennsylvania?

A. Yes, sir.

Q. From men who slaughter their own cattle?

A. Some who slaughter their own cattle.

Q. What other retail butchers do you obtain this from?

A. The butchers that buy their cattle from the wholesalers, buy their meat already slaughtered from the wholesalers.

Q. Who are the wholesalers?

A. The Pittsburgh Provision Company, Dunlevy & Brother Packing Company, and Zoller. Then there is Armour and Swift, and all western packers.

Q. Those wholesalers are government inspected plants, are they?

A. Those that I mentioned are.

Q. And you get some from the wholesalers, do you?

A. We get some from butchers who buy their cattle and kill it themselves, without inspection.

Q. And you also buy it from wholesalers directly?

A. Yes, some.

Q. Do you buy any fat from wholesalers outside of the City of Pittsburgh?

A. No.

Q. The tallow oil that you shipped on January 15, 1915, was consigned to whom in Rotterdam?

A. I think it was consigned to Daniel Loeb.

Q. Was he acting as a broker, or had you sold it directly to him?
A. We sold it through a broker to him.

Q. Is either tallow oil, stearine, tallow or cracklings, used
59 anywhere to your knowledge as a food by mankind?

A. No.

Q. Besides the uses to which you have testified tallow oil and tallow are applied, is it used anywhere in the manufacture of glycerine?

A. Well, in using it for soap, the glycerine is either first extracted or extracted from the lye that comes from the soap. There is about nine per cent. of glycerine in this fat, and that is extracted.

Q. And sold for what purpose?

A. It is sold for either—We sell ours for dynamite purposes. It is sold for dynamite and toilet purposes, or medicinal.

Q. Do you manufacture glycerine and sell it directly, do you?

A. We do.

Q. It is also used for the purpose of manufacturing tallow candles, which have become largely discontinued.

A. Yes. They are practically out of use now.

Q. And your firm manufactured a great many of them?

A. A great many of them. In fact, that is what we first made the tallow oil for, to get the stearine for tallow candles.

Cross-examination by Mr. Price:

Q. How many grades of tallow oil does the Pittsburgh Melting Company manufacture?

A. Just one.

60 Q. Do you mean to say that you ship the same grade of tallow oil to Holland as you would send over to the Walker soap factory?

A. Yes.

Q. How is that tallow oil made?

A. The fat is taken and it is washed in ice water, and it is hashed in a hasher; that grinds it up, and it is melted in a water-jacket kettle and settled, and it is run into containers, kept in a warm room for about sixty hours, until it is seeded, and then it is put into duck cloths and pressed in a press. The thin part that runs from the press is the oil and the part that remains in the cloth is stearine.

Q. Is any of your tallow oil made in open kettles?

A. It is all made in open kettles.

Q. It isn't made under steam pressure then?

A. No, no pressure at all.

Q. Can you tell at what temperature the fat is rendered?

A. 145 to 155.

By Mr. Clay:

Q. Fahrenheit?

A. Yes.

By Mr. Price:

Q. That product is also known sometimes as oleo oil?

A. It is.

Q. What percentage of that product do you ship to Holland?

A. Of the percentage we make?

Q. Yes, roughly.

61 A. I would say 75 to 80, or along in there; possibly more; possibly 90.

Q. How many years have you been shipping this product to Holland?

A. Since about 1879. We shipped some before that to England; away back thirty years before that we shipped it to England.

Q. Do you ship this product to any other countries except Holland?

A. Yes.

Q. What countries?

A. We ship it to England and to Sweden; have shipped some of them to Turkey, or somewhere in there we shipped one lot.

Q. About what per cent. of your product would you say you shipped abroad?

A. Well, I have just told you. I suppose somewhere between 75 and 90 per cent.

Q. I thought you said 80. Now you say 90 per cent?

A. I corrected it, and said possibly 90.

Q. Is that the identical product that you sell to soap manufacturers?

A. Yes, just the same.

Q. You don't mean that it is made in exactly the same way, do you?

A. Just exactly the same way. It is the same product.

Q. You spoke of the railroads requiring an acid test. Will you explain what that is?

A. A railroad that buys tallow now, they buy it on an acid test. Their specifications call for the maximum amount of acids,

62 say one-fourth of one per cent., and if it runs over that they don't buy it, they won't have it.

Q. Do you know what percentage is that they require, as a matter of fact?

A. I wouldn't say positively. I think it is about one-fourth of one per cent., possibly a half.

Q. In the Pittsburgh Melting Company is there any process by which the acid can be taken out of the tallow and tallow oil?

A. No, they don't do it. They try to avoid having any.

Q. Did I understand you to say that you got fats from the Pittsburgh Provision & Packing Company?

A. No, I didn't say so. We have bought some, but I didn't say so; not as a rule.

Q. You don't buy from the packers which maintain inspected plants?

A. We have and do when we can buy it right.

Q. Have you bought recently from the inspected plants?

A. I would say not within six months, but we have within a year.

Q. Do you buy most of the fat from the retail and wholesale butchers?

A. Mostly. We buy all our fat from retail and wholesale butchers. Nowhere else to buy it, you understand.

Q. Have you a contract or agreement with Daniel Loeb?

A. No.

Q. Do you know what is Daniel Loeb's business?

A. He is a dealer in all kinds of oils, greases and tallows.

63 Q. A broker, in other words?

A. No, I don't say he is a broker. He is a dealer. He buys it from us and pays us for it.

Q. He buys and sells?

A. A broker, as I distinguish them, a broker is a man that don't—he just merely acts as a go-between, and gets a brokerage. Daniel Loeb is a dealer. He buys it, pays for it and sells it again.

Q. He buys it from you in wholesale quantities and sells it to other people?

A. I suppose he does. I don't know what he does with it. We have been dealing with him for many years.

Q. He doesn't, so far as you know, manufacture this himself?

A. I think not.

Q. Do you know, as a matter of your own information, that in Holland large quantities of butterine are manufactured?

A. I have heard so. I don't know it. I was never over there.

Q. Do you not know or haven't you reason to suppose that this product which you ship to Daniel Loeb, is made up into butterine or oleomargine?

A. I don't know, and I have no reason to suppose so.

Q. Would you say it is not used——

Objected to.

By the Court: Objection sustained. He cannot say that.

64 By Mr. Price:

Q. Do you ship the best grade of your product abroad?

A. We ship some of the worst too. We ship garbage grease abroad too.

Q. Then you ship different grades of the product abroad?

A. Yes.

Q. I thought you said you only made the one grade——

A. Of oil, of tallow oil we only make one grade, but you said material, you didn't say oil.

Q. Put it this way: You ship your best grades of tallow oil abroad?

A. We make only make one grade. I have already told you that we only make one grade.

Q. Is this 75 to 90 per cent., does that mean all of your products or just tallow oil?

A. Just the tallow oil.

Q. The remaining 25 or 10 per cent is of a lower grade than the 75 to 90 per cent, is it not?

A. Oh, yes.

By Mr. McClay:

Q. You don't make but one grade of tallow oil?

By Mr. McClay: I would like to have the question read, so the witness will understand.

(Question read as follows: "You ship your best grade of tallow oil abroad?")

A. We only make one grade of tallow oil.

65 By Mr. Price:

Q. Would it not be more economical to manufacture the tallow or material that was used for making soap, under pressure, under steam in closed kettles?

A. Well, now, you are assuming that we don't manufacture—Is that a criticism of our work?

Q. Not at all. I am only asking a question.

A. It is fair to assume that we manufacture it in the way that is most economical.

Q. For what purpose?

A. For any purpose; anything we are making we try to make in the most economical way.

Q. The fat that you do not consider good enough to make up the product which is shipped abroad, is turned into industrial products such as soap, is it not?

A. I don't just quite understand what you are trying to get at. I have told you we have shipped garbage grease abroad.

(Question read.)

A. I don't understand what you are trying to get at.

Q. The question is clear.

A. Not to me.

(Question read.)

A. We ship any product abroad; if we can get a better price abroad than we can at home, we ship any product abroad. You are assuming that we wouldn't—Your question is mixed. The meaning is not clear.

Q. Some of your product you send over to the Walker factory to be made into soap, do you not?

A. If they pay more for it than——

Q. Other of your product you ship to Holland?

A. Yes, and some to Chicago.

66 Q. The product that you send over say to the Walker factory, is made from fats that are inferior to the fats that make the product which you ship to Holland?

A. I didn't say that.

Q. Is that not true?

A. No. Some of it may be inferior, and some of it is just the same.

Q. Does the Walker factory obtain fats from other places besides the Pittsburgh Melting Company?

A. Sure.

Q. Isn't it a fact that a great deal of the product which the Walker factory buys from other sources, is rendered under pressure, under steam pressure in closed kettles?

A. I don't see what you are talking about. What do you want to know about the Walker factory for?

Q. Please answer the question.

A. I don't know. We buy the stuff——

By Mr. McClay: I object to the question unless the counsel designates clearly what factory he is talking about, whether it is the W. & H. Walker Company or the Pittsburgh Melting Company.

(Question read.)

A. The Walker soap factory render under pressure, themselves, some.

By Mr. Price:

Q. Do they obtain products from the Pittsburgh Melting
67 Company, and then render those products in closed kettles?

By Mr. McClay: I have not been objecting to this. They are putting their defense into this cross-examination, and I am permitting it to go on. If it goes too far of course, I will make an objection.

By the Court. The methods that are customary with these people don't seem to me to be cross-examination.

By Mr. McClay: I object to the question as not proper cross-examination.

Objection sustained.

By Mr. Humes:

Q. There are two accepted methods in the preparation and processing and refining of meat fats in use by such melting concerns as the Pittsburgh Melting Company, are there not? There is the pressure process in closed kettles, in which the material is subjected to a high degree of heat, and there is the method that is in use by the Pittsburgh Melting Company, of using a water-jacket kettle; are there not?

A. Yes, there are two methods. That is correct.

Q. Is it not a fact that were the Pittsburgh Melting Company to use the pressure method with the higher degree of heat, rather than the method which they do use, that they could not sell this
product to Daniel Loeb or to the other consumers in Hol-
68 land with whom you do business at this time?

By Mr. McClay: Objected to as not proper cross-examination.

Objection sustained.

By Mr. Humes:

Q. Is it not a fact that the customary and the generally accepted and economical method of rendering fats for industrial purposes and for soap purposes, and other industrial purposes, you have outlined, is to render it under pressure and using a higher degree of heat than the *the* degree of heat that is used by the Pittsburgh Melting Company?

By Mr. McClay: Objected to as improper cross-examination. Objection sustained.

By Mr. Price:

Q. When you spoke of the concerns to whom you sell your products, you meant by that that you sold the by-products, grease and so on, rather than the tallow oil itself?

A. No, I didn't say that.

Q. What do you sell to the railroads, for instance?

A. We have sold them some of this oil, tallow oil.

Q. What else do you sell the railroads?

A. We sell them—well, you get W. & H. Walker confused with——

69 Q. I mean the Pittsburgh Melting Company.

A. I think we just sold them tallow oil recently; we sell them some tallow sometimes.

Q. The by-products as well?

A. What do you mean by by-products?

Q. Such as grease.

A. No, the railroads don't buy grease.

Q. What does the Westinghouse Airbrake Company buy?

A. Tallow oil.

Redirect examination by Mr. McClay:

Q. You spoke about selling garbage grease.

—. The Pittsburgh Melting Company doesn't ship any.

Q. It is W. & H. Walker?

A. Yes, W. & H. Walker. We were speaking about Daniel Loeb. He is a dealer in all greases, you know.

Recross-examination by Mr. Price:

Q. As I understand it, the Pittsburgh Melting Company ships only tallow oil to Daniel Loeb?

A. No, they ship to anybody that buys it.

By Mr. McClay:

Q. What does Daniel Loeb buy from the Pittsburgh Melting Company?

A. Tallow oil.

70 By Mr. Price:

Q. Exclusively?

A. He buys some tallow too.

By Mr. McClay:

Q. And stearine?

A. I don't know that he bought any stearine. He bought the tallow. That is the oil and the stearine before it is separated.

Q. In the sale of your product in the United States or to foreign countries, do you sell any of your product to oleomarg-rine factories?

A. None.

Q. I show you a book called "U. S. Department of Agriculture, Bureau of Animal Industry. Regulations Governing the Meat Inspection of the United States Department of Agriculture, Effective November 1, 1914." I call your attention to page 67 upon which is printed a certificate which the Government asked you to sign. Will you say why you didn't sign that certificate?

A. I objected to the word "inedible" in there. I didn't know just what they meant by it. I think it is the wrong word to use, myself. I don't know that any of the stuff we make is not capable of being eaten. That is up to the other fellow.

Q. But is it eaten as human food?

A. It is not.

Q. I call your attention to a book entitled, "U. S. Department of Agriculture, Bureau of Animal Industry, Order 150. Regulations Governing the Meat Inspection of the United States Department of Agriculture," and ask you to look at page 2 of the
71 amendment to Section 19 of Regulation 25, under the heading "Edible Fat," the amendment to which I call your attention being an amendment to Section 19 of Regulation 25, exempting shipments of certain inedible greases, tallow or other fat, from the provisions requiring the denaturing of inedible products, U. S. Department of Agriculture, Office of the Secretary, Washington, D. C., April 24, 1908. Was the certificate signed by the Pittsburgh Melting Company at all?

A. That is the one I tendered that shipment under.

Q. That is the one they signed and continued to sign up until the shipment was stopped?

A. Yes, that's right.

Q. Then they insisted upon your signing, did they, the one on page 67 of the new rules?

A. That is correct.

Q. You understood by those rules and regulations, which they asked you to sign, that this tallow oil was incapable of being used, was that it was not possible for a human being to use it and not be injured by it?

A. That is what I understood they wanted me to swear to.

By Mr. Humes:

Q. You say that you gave to the shipper this certificate that has just been called to your attention?

A. Yes, the one we had been shipping under for four or five years.

Q. The one that was prescribed by the old regulations?

A. Yes.

72 Q. Do I understand you to say that you didn't know what this product was to be used for when it reached Holland?

A. You understood me to say that, yes.

Q. In that certificate you certified, among other things, that, "The said fat is of such a character or is intended for such a use that denaturing is impossible or will render said fat unavailable for the desired industrial use."

A. That is right.

Q. If you had no knowledge as to the use to which it was to be put, how could you make a certificate of that kind?

A. Because it was true.

Q. How do you know that it was true, if you had no knowledge of the use to which it was to be put?

A. I would just like to look at that thing.

(Paper shown witness.)

A. I don't know how to do it except by spoiling it, do you?

Q. Yes. Do you know that this tallow oil can be denatured so as to destroy none of its value and usefulness for industrial purposes?

A. I do not, and I don't believe it.

Q. Have you ever made an effort to ascertain whether or not it could be so denatured?

A. We had some material from the Dunlevy Packing Company, that the Government denatured, within two months, and it spoiled it. They put carbolic acid on it.

73 Q. Do you not know that by the use of power distillate, this product can be denatured?

A. No.

Q. And destroy none of its value for industrial purposes?

A. I do not.

Q. Did you ever try it?

A. No, I never heard of it until you told me. I never met anyone that did. Two or three years ago the Government issued a regulation, which they had to withdraw, on denaturing, and there was a protest from all over the country, and I don't know of anyone that ever used it. What do you mean by "denaturing?"

By Mr. McClay: There isn't such a word in the dictionary.

By Mr. Humes: We will produce that later.

A. We had a barrel of denatured alcohol there, and two of our men broke into the room and stole some of it and died the next morning. Is that what you mean by "denatured?"

Q. Denatured alcohol is not for human consumption, is it?

A. It so proved.

Q. Then there is such a thing as denaturing, if that alcohol was denatured?

A. Yes, it was thoroughly denatured.

Q. Q. You say the Government asked you to sign that cer-
74 tificate provided for in the new regulations, with reference to the capability of this product——

By Mr. McClay: No, he didn't say that.
By Mr. Humes: He said somebody did.

A. The Baltimore & Ohio Railroad reported that the Government had stopped shipment without that certificate. That is the same thing.

Q. As a matter of fact, before anyone connected with the Department of Agriculture communicated either with you or with the Baltimore & Ohio Railroad on this subject, this shipment had gone forward, had it not?

A. I think it had.

Q. And it was without the jurisdiction of this Court?

A. That might be. I don't remember. I think you held it. The Railroad held it. Mr. Smith is there; he knows.

Q. Is it not a fact that this shipment left Pittsburgh even before the bill for this injunction was filed in Court?

A. I don't know. Mr. McClay can tell you that. As I recollect the matter, the B. & O. were holding that shipment. They wouldn't forward it. I don't know where they were holding it. It might have been in their yard or it might have been at Confluence,
75 I don't know, but they notified us that they were holding it by your direction.

Q. You don't know when it went forward?

A. I don't know where it was.

Q. Did you not know as a fact, that the certificate which you have just referred to, as to the edibility of this product, was not filed with the Railroad Company until some days after this shipment had gone forward, and that it was dated back?

A. I don't know that.

Q. Who signed that certificate?

A. I don't know that. Mr. Womsley, I suppose. He looks after that. I will accept responsibility for it, but I don't remember who signed it.

Q. And you don't know when it was filed?

A. No. They kept filing them, when they went for the bill of lading, they would take the certificate along. I don't know about the bill of lading for this shipment.

76 *Testimony of W. H. Womsley.*

W. H. WOMSLEY, a witness called on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct examination by Mr. McClay:

Q. You are employed by the Pittsburgh Melting Company?

A. Yes, sir.

Q. You have been employed by the Pittsburgh Melting Company for how long?

A. For about fifteen years.

Q. Do you have anything to do with the manufacture of tallow oil and tallow and stearine?

A. In a general way, I superintend the operations.

Q. Do you make any of the sales?

A. Yes, sir.

Q. Have you any knowledge of who the customers are?

A. Yes, to a certain extent.

Q. I wish you would tell us who your customers are, some of them, and for what purposes they use this tallow oil, stearine and tallow, and what particular product you sell to each of them.

A. The purpose for which our customers use it is entirely immaterial to us. We make no inquiries whatever. The names I shall read, if they are desired, are the names of our customers who use our different products. The purpose for which they are used is only a surmise on my part. We sell to Colgate & Company.

77 Q. What is their business?

A. Manufacturers of soap—tallow. We sell to the Fairbanks Company, tallow oil.

Q. Designate the business of each of these companies.

A. Fairbanks & Company, of Chicago; Fels & Company, soap makers, of Philadelphia; Swift & Company, of Chicago; W. H. Walker, of Pittsburgh; George Hasley & Sons; Proctor & Gamble; National Casket Company; Hartley-Rose Belting Co.; Baltimore & Ohio Railroad Company; Pittsburgh & Lake Erie; National Tube Company; the plumbers; Freedom Oil Works; the penitentiaries.

Q. You are not doing what I asked you to do. Specify what you sell to them. To Fairbanks & Company you sell what?

A. Tallow oil.

Q. Fels & Company, you sell what?

A. Tallow.

Q. Swift & Company?

A. Tallow.

Q. W. & H. Walker?

A. Tallow oil.

Q. George Hasley & Sons?

A. Tallow and tallow oil.

Q. Proctor & Gamble?

A. Tallow.

Q. National Casket Company?

A. Tallow.

Q. Hartley-Rose Belting Company?

A. Tallow.

Q. The various railroad companies?

A. Tallow.

78 Q. National Tube Company?

A. Tallow.

Q. The plumbers?

A. Tallow.

Q. The oil companies?

A. Tallow oil.

Q. The penitentiaries?
A. Tallow oil.
Q. Pittsburgh Metal Bed Company?
A. Tallow.
Q. John A. Beck Salt Company?
A. Tallow.
Q. What is their business?
A. They were formerly in the manufacture of salt.
Q. What business are they now in?
A. They are out of business.
Q. While they were in business they manufactured salt, did they?
A. Yes, sir.
Q. Do you know for what purpose they used it?
A. No, sir.
Q. Westinghouse Air Brake Company?
A. Tallow oil.
Q. Anything else?
A. Tallow stock.
Q. Murer Bros. Tin Plate Works?
A. Tallow.
Q. Standard Underground Cable Company?
A. Tallow.
Q. Pittsburgh Water Heater Company.
A. Tallow.
Q. Ford Steel Wheel Company?
A. Tallow.

79 Q. To what other companies do you sell? Designate the business in which they are engaged.

A. Charles F. Stifel Company stearine. All the names I shall read are stearine. John G. Hoffman & Sons Co., Wheeling; Bear & Ruth Company, Sandusky, Ohio; England Walton Company, Philadelphia; H. V. Britney Company, Springfield, Ohio; Grapeville Tannery, Grapeville, Pa.; Federal Oak Leather Company, Columbus, Ohio; William Flaccus Company, Pittsburgh; Rudolph Suhre & Sons Co., Cincinnati; W. C. Robinson & Sons Co., Coraopolis, tallow oil; Hastings Tanning Company, Ontario, Canada, stearine; Maccabee Powder Company, tallow; Hess & Hopkins Leather Company, Rockford, Ill., stearine; J. Eavenson & Sons, soap makers, Camden, N. J., tallow; Findiess & Heckel Oak Leather Company, Milwaukee, stearine; Herman Zorlandt Leather Company, Milwaukee, stearine; Armour & Company, Pittsburgh, tallow; W. W. Baker Tanning Company, Halesboro, Va., stearine; Levin Tanning Company, St. Louis, Mo., stearine.

Q. I didn't notice in the list of these customers which you have read, the name of Daniel Loeb. You shipped him tallow or tallow oil, stearine and tallow, did you?

A. Since I have been connected with the company, we have sold him tallow oil.

Q. Have you sold him anything else?
A. No, sir.
Q. Do you sell your product to manufacturers of oleomargarine?

A. No, sir.

80 Q. Is tallow oil, tallow, stearine or cracklings, or either of them, used for food?

A. No, sir.

Q. You shipped a car to Daniel Loeb, Rotterdam, Holland, on January 15, 1915, or you delivered it for shipment, did you?

A. Yes, sir.

Q. With that shipment did you offer any certificate?

A. Yes, sir.

Q. What form of certificate did you offer for that?

A. The one we have been using for about four years; not the last one.

Q. Read it.

A. "I hereby certify that the following described fat is inedible and is not intended for food purposes, and that the said fat is of such a character or is intended for such a use that denaturing is impossible or will render said fat unavailable for the desired industrial use."

Q. Well, now, did they accept that?

A. No.

Q. What happened?

A. We were notified that that was not the proper form.

Q. And then you were shown the form on page 67 of the Rules and Regulations adopted November 1st, 1914?

A. Yes, sir.

Q. What did you do about signing it?

A. Declined to sign it.

Q. Do you know whether the shipment went forward without any certificate?

81 A. The shipment went out of Pittsburgh toward its destination; how far, I don't know.

Q. What did the Baltimore & Ohio Railroad Company say?

A. Notified us by letter in our files pending the decision of the Court, that the car was held.

Q. And then the bill in this case was prepared and filed in this Court?

A. Yes, sir.

Q. After the injunction was granted, did you sign a certificate in the form you had been previously using and the one to which I called your attention, and the one which you read to the Court a minute ago?

A. I presume they went along——

Q. Did you sign it?

A. Yes, sir.

Q. Why did you refuse to sign the new certificate, as prescribed by the Rules and Regulations of November 1st, 1914, as shown on page 67 of those Rules?

A. Because we had no knowledge that our product was incapable of being used for any purpose, in fact.

Q. In other words, if somebody had chosen to use it, it wouldn't poison them?

A. Certainly.

Cross-examination by Mr. Humes:

Q. In the manufacture of this product it was your effort and desire, as far as possible, to so manufacture it that it would be sufficiently pure and wholesome that it could be used for any purpose?

A. Yes, sir.

82 Q. And you recognized that your method of manufacture had been such that both for food and industrial purposes the value of the product had been preserved?

A. Yes, sir.

By Mr. McClay: Don't answer that too fast, until you know what he is talking about. I would like to have the question read.

(Question read.)

A. For any purpose.

Q. You have answered him exclusively as to food purposes?

By Mr. Humes: That wasn't the question.

A. Or any purpose, I understood.

By Mr. Humes: I followed it to the second question, and asked him if it preserved its value for all purposes, food and industrial.

By Mr. McClay:

Q. Do you sell this for food purposes?

A. No, sir.

By Mr. McClay: I submit that question is unintelligible——

83 By the Court: It is a speaking question, and asserts a fact that has not been testified to by the witness, and therefore is objectionable on cross-examination. Had the objection been taken in time, I would have sustained it.

By Mr. McClay: It was impossible to object to it, the witness answered so quickly.

By Mr. Humes:

Q. In the manufacture of this product and the sale of it, you made no inquiries nor took any interest in the use that was to be made of it by the purchasers?

A. That is what I have said.

Q. You felt it was a matter of no interest to you what use it was put to, after it was sold by you to your customers?

By Mr. McClay: Objected to as the feelings of the witness are not in controversy in this case. It is a question of fact that is involved, what was done. The witness has answered that no inquiry was made.

By the Court: The feelings of the witness do not make any difference. I will sustain the objection. You can put it in a different way perhaps.

84 By Mr. Humes:

Q. You never made any inquiries as to the use to which it was to be put by those that purchased from you did you?

A. I have answered that question three times.
Q. I think——
A. No.
Q. And, as I understand, in the manufacture of this product you use a water-jacket kettle and do not subject the product to a high degree of temperature. Is that correct?

By Mr. McClay: Objected to as not proper cross-examination.
Objection sustained.
By Mr. Humes: I would like to know why this is improper cross-examination.
By Mr. McClay: You are getting into your defense.
By the Court: He was not examined with respect to it at all, under direct examination. It was another witness that testified to that.
By Mr. Humes: I beg the Court's pardon, then. I thought he had been asked about that.

85 By Mr. Humes:

Q. What percentage of the output of the Pittsburgh Melting Company of tallow oil or oleo oil was shipped to Daniel Loeb in Holland?
A. During what specified time?
Q. Well, over any period; over a period of the last two or three years, during the time that you have been shipping under the certificate that has been testified to?
A. Without an accounting, I couldn't answer that accurately, because we have other customers than Daniel Loeb.
Q. I will change the question then, and ask you what percentage of the output is shipped abroad?

By Mr. McClay: Output of what?
By Mr. Humes: Of the oleo or tallow oil.

A. During the past two months hardly any of it.
Q. I mean up to the time of the filing of this bill?
By Mr. McClay: From January 1st, 1914, up to the time of the filing of the bill, during the past year.
A. I should say 90 per cent.

By Mr. Humes:

Q. In making this shipment on January 15th, what else did you do than to tender and file the certificate with reference
86 to the inedibility of the fat; what else did you do to the shipment to designate it?
A. We branded it as we always did, if that is what you mean, as inedible, according to the rulings of the Secretary of the Bureau of Agriculture.
Q. According to the old regulations?
A. Yes, sir.
Q. Do you not know, and is it not as a result of an understanding with you and your company, that the word "inedible" on these tierces when they reach Holland, is immediately taken off of the tierces?
A. I have no knowledge of that. I never heard that is was.

Q. You have testified that you declined to file the certificate provided for by the regulations that went into effect on November 1st, because you had no knowledge that the product was incapable of being used as food for man——

By Mr. McClay: He didn't so testify.

By the Court: He said he didn't want to certify that it was not capable of being used; in other words, that it wouldn't injure a person. Some reference was made to poison, whether it was by counsel or the witness I do not remember.

By Mr. Humes:

Q. Is it not a fact that your reason for declining to file that certificate, was because you knew that this product was incapable of being used for food by man, and that you also knew that
87 it was edible if anyone cared to use it for edible purposes?

By Mr. McClay: Objected to as the witness has very clearly stated the fact, what he meant.

By the Court: Let the witness explain it again.

(Question read.)

A. Are there not other provisions in the certificate that I would be obliged to sign?

By Mr. Humes:

Q. This is the one you referred to in your direct examination.

(Question read.)

By Mr. McClay: The snake in that is "for food."

By Mr. Humes: I don't think that is proper.

By the Court: Let the witness answer the question.

A. The reason I didn't sign it was that it is capable of any use. We make it as good as we can, out of the best material we can obtain.

88 By Mr. Humes:

Q. When you say it is capable of any use, you mean either industrial or——

A. Any use whatever.

Q. And is it not a fact that you also know that this fat is edible?

A. What do you mean by "edible"—in its present form?

Q. Is it not a fact that this food can be processed so as to make it an edible product?

By Mr. McClay: I object to that in the form in which it is put; the counsel saying it is food, when in point of fact it is known as tallow oil, and it is very easily designated as such.

(Question read as changed, as follows:)

Q. Is it not a fact that this tallow or oleo oil can be precessed so as to make it an edible product?

A. I presume it can.

By Mr. Humes:

Q. And is it not a fact that this product could be readily manufactured into oleomargarine?

A. I presume it can.

Q. Is it not a fact that it is sold abroad to Loeb and to others, with the understanding that it is capable of such a use?

By Mr. McClay: Read the question again, and let the witness understand it.

89 (Last question read.)

A. We never so state in our correspondence.

By Mr. Humes:

Q. You never represent it in your correspondence as being inedible, do you?

A. We certify that it is inedible.

Q. To the person to whom you ship it, or to the railroad company.

A. To the railroad company.

Q. Do you ever in your correspondence represent to the customers abroad that it is an inedible product?

A. I have no recollection that we ever did.

Redirect examination by Mr. McClay:

Q. What is on the barrel?

A. "Inedible."

Q. And how is that put on the barrel?

A. In stencil of two inch letters.

Q. With paint?

A. Yes, sir.

Q. And also the end of the barrel is painted white, isn't it?

A. Yes, sir.

Q. So that you distinctly mark it "Inedible?"

A. Yes, sir. I understood him to say that we certified.

Q. You don't mean to tell us today that tallow oil may be made edible in any other way, except that it must go through

90 other processes in the manufacture of oleomargarine?

A. I don't mean to tell you that.

Q. The fact is that tallow is not an edible product in the form in which you produce it?

A. Certainly not.

Q. And it is not sold as such?

A. No, sir.

Q. And tallow oil is not used anywhere——

By Mr. Humes: That is leading.

By the Court: It is a little leading.

By Mr. McClay: It is leading, but it is the form in which counsel for the other side has brought out the answers of this witness.

Q. Is this tallow oil used, so far as you know, anywhere in the

United States or Holland or Germany, or any countries on the Continent, or England, as an edible or meat food product?

By Mr. Humes: We object to those leading questions.

By the Court: I don't think that is leading. It is called out by the recross-examination.

91 By Mr. McClay: We offer in evidence Section 6, Paragraph 1, of the regulations governing the meat inspection of the United States Department of Agriculture, effective November 1st, 1914. This paragraph reads as follows:

"The proprietor or operator of each grease rendering or grease refining establishment, and of every other establishment which has not been granted inspection or exemption, which prepares or ships any article or articles derived wholly or in part from cattle, sheep, swine, or goats for interstate or foreign commerce, or in the District of Columbia, a Territory, or other place under the jurisdiction of the United States, which article or articles it is claimed are not capable of being used as food by man, shall file with the Secretary of Agriculture a declaration that none of such articles are for human consumption, nor will be sold or shipped from such establishment otherwise than in compliance with these regulations, and that no article for human consumption derived wholly or in part from cattle, sheep, swine, or goats will be prepared at or in such establishment or will be sold or shipped therefrom. Such establishments may be inspected at any time to ascertain whether any article derived wholly or in part from cattle, sheep, swine, or goats is prepared therein for human consumption, or whether any declaration filed or offered for filing is false in any particular."

92 By the Court. What is that section?

By Mr. McClay: Section 6 of Paragraph 1, of Regulation 4, of November 1st, 1914. That is one of the paragraphs we say is unreasonable and invalid.

By Mr. McClay: We also offer in evidence Section 12 of Regulation 25, effective November 1st, 1914, on page 67.

It is stipulated and agreed that the Regulation effective April 1st, 1908, and the Regulations effective November 1st, 1914, shall be considered in evidence, and that the Court shall consider any part thereof which seems to be material to this case.

By Mr. Humes: It seems to me that in the light of the testimony that has been adduced to date by the complainants, that they have not made out such a case as would warrant the Court in proceeding any farther with the bill.

(The point was argued by counsel.)

By the Court: I will hear the evidence on the part of the Government in this case.

Recess.

93 Afternoon Session.

DEFENDANTS' CASE.

Testimony of Robt. J. Smith.

ROBERT J. SMITH, a witness called on behalf of the defense, having been duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. Are you the freight agent of the B. & O.?

A. The Baltimore & Ohio Railroad; yes, sir.

Q. Did you, in response to a subpœna, produce the records of a shipment made by the Pittsburgh Melting Company in January?

A. Yes, sir.

Q. Will you produce the way bill?

A. I can produce a copy of it. Of course, the way bill proper is in the hands of the agent in New York.

Q. It is a duplicate of the original?

A. Yes.

Q. Will you read that way bill?

A. Way bill No. 94, reading "From Junction Transfer, Pa., to St. George Ferry, New York." It is dated January 21, 1915. The car initial is B. & O.; the number, 14224. The consignor is Pittsburgh Melting Company, and the shipment is consigned to the order of the Pittsburgh Melting Company, notify Daniel Loeb,
94 Rotterdam, Holland, care of Holland-American Line Steamship Sommoladyk, sailing January 28, 1915; contents of the car, 100 tierces of tallow oil; weight, 44,300 lbs., the rate to New York being 18 cents per hundredweight, the ocean rate being 75 cents. The tierces are marked in a diamond "D. L. 1 to 100, inedible."

Q. Do you know when that car was delivered for shipment?

A. January 15th.

Q. Was there a shipper's certificate filed by the shipper at that time?

A. Yes, sir.

Q. Have you the certificate?

A. I have the certificate.

Q. State whether or not Defendants' Exhibit "A" is the certificate which was delivered on January 15th by the Pittsburgh Melting Company.

A. It is.

Q. Was the car sent forward on that certificate?

A. Yes, sir.

Q. When was the car sent forward from Pittsburgh?

A. On the 16th of January.

Q. Does your record show when the car reached New York?

A. No, sir.

(No cross-examination.)

95 *Testimony of Robt. H. Kerr.*

ROBERT H. KERR, a witness called on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. What is your profession or occupation?

A. Chemist.

Q. Where did you study chemistry?

A. At the Oklahoma Agricultural & Mechanical College and at the George Washington University.

Q. Did you make a special study of chemistry?

A. Yes, at both schools.

Q. When did you graduate?

A. I graduated from the Agricultural & Mechanical College in Oklahoma in 1903. I took special work at the George Washington University, a special course in chemistry, a graduate course, and did not graduate there.

Q. What work were you engaged in after you graduated?

A. From October, 1903, until January, 1906, I was employed by the Maryland Agricultural College as a chemist, my work there being the analysis of chemical fertilizers and feeding stuffs. In January, 1906, I was appointed as an assistant chemist of the chemical division of the Bureau of Animal Industry of the Department of Agriculture, and I worked in that position until the first of January, 1907. My work in that position was first analysis of dips and disinfectants; afterwards, after the passage of the Meat In-
96 spection Act in June, 1906, I was concerned in the chemical work in connection with the enforcement of the meat inspection laws. Then at the 1st of January, 1907, I resigned and took a position with the American Agricultural & Chemical Company, as chemist at the Lazaret Works in Baltimore. My work there was the analysis of chemical fertilizers. Then in November, 1907, I returned to the former position in the Department of Agriculture, and have been there since.

Q. What is your special work in the Bureau of Animal Industry?

A. I am particularly concerned with the analysis of fats and fat products, such as lard, compounds, shortenings, oleo oil, oleo stearine, tallow, and so forth.

Q. About how many analyses do you average in a year, in these products?

A. I haven't kept exact account, but I suppose somewhere in the neighborhood of a thousand samples; about a thousand. Some ars possible a few more, some years a few less.

Q. Did you in January, 1915, take samples from a shipment of eo or tallow oil made by the Pittsburgh Metling Company to Daniel oeb, Rotterdam, Holland?

A. I did.

Q. Where did you collect those samples?

A. At the Baltimore & Ohio yards in New York City, Staten Island, New York

Q. When did you collect them?

A. On January 21st, 1915.

Q. Who was with you when you took the samples?

A. Mr. M. J. Buckley.

97 Q. You may state how you proceeded to take those samples?

A. I went to the freight yards with Mr. Buckley. We found there a lot of 100 tierces, which Mr. Buckley identified as being the shipment in question. We then got the assistance of a cooper, who was I suppose employed at the yard there. He took out the bungs from six tierces and samples were taken from these six tierces with a tryer.

Q. What is a tryer?

A. It is a long tube, open on one side, sufficiently long to reach entirely through a tierce, and by a turning movement a block of fat is removed, making a block completely through the tierce, thereby getting a fair sample of the whole amount of fat in the tierce.

Q. What tierces did you take samples from?

A. I will have to read my notes for that. Samples were taken from six tierces, numbered respectively 45, 37, 97, 50, 3 and 52.

Q. What did you do with those samples?

A. Those samples were placed as taken, in tin sample containers, records made of them; then after taking the samples they were taken to the New York inspection office, and there a record made of them on the office records, in my presence. Then they were put back in my suit case and I carried them back to Washington, keeping them all the time in my possession, until I got back into the laboratory the next day. After getting back to the laboratory, I called in Dr. Thatcher, of the meat inspection laboratory, and we made a physical and chemical examination of them.

Q. Had those samples been sealed from the time you took them until the time you opened them?

98 A. No, they were not sealed at all. I simply kept them in my possession all the time.

Q. Had they been kept in the same containers and the lids kept on the containers during that time?

A. Yes, sir; they were kept in the containers. They were done up in a package in the New York office, and they were kept in those containers and wrapped up in a package, until I got back into the laboratory.

Q. Will you state what examination you made of these samples, and what results you obtained from that examination?

A. I gave them a physical examination first, noting the consistency, which was a soft, buttery, grainy, consistency; had a grainy texture, about the consistency of butter, soft and buttery. They had a light yellow color; they had a bland, pleasant, beef-like taste and odor. They melted clear, with the same pleasant odor and taste that they had when cold. There was no physical sign of rancidity or taint. They were perfectly sweet. They had all of the characteristics that I would expect to note in edible oleo oil.

Then, after the physical examination, they were given a chemical test first for rancidity, and found free from rancidity. Then the amount of free acid was determined, which varied somewhat, the lowest acidity found being 1.13 per cent., the highest amount of free acid found being 1.47 per cent. They were tested for cotton seed oil, and found to contain none, and the iodine number and refractory index were determined. The iodine number was approximately 47. I think the lowest was 47. I will refer to my notes and give you those figures exactly. The lowest iodine number was 47.12, the highest 47.99. The refractory index at 40 degrees was 1.4570
99 or 1.4571, for all samples. These constants were what are normally observed in good edible oleo oil. That would also be normal for any edible tallow oil.

Q. What percentage of acid would be required to make the product inedible?

A. I have never attempted to say that any particular percentage of free acid would cause the product to be regarded as inedible, but almost invariably an excessive amount of free acid is associated with other characteristics which render the product clearly unfit for food. It is my custom in my work to regard anything having any fat which shows an amount of free acid exceeding two per cent., with a great deal of suspicion. I have, however, certified a considerable number of samples as edible, in my opinion, which contained more free acid than two per cent.

Q. Do you remember what was the highest per cent. which you have certified as edible?

A. I couldn't tell you definitely, but probably somewhere not much over three per cent.

Q. What is the difference between tallow oil and oleo oil, if there is any?

A. Oleo oil, as I understand it, from my observation of products prepared by the inspected packing houses, is a product prepared by pressing oleo stock; oleo stock is prepared by taking the fresh beef fats, melting them at a low temperature in an open kettle, the temperature being kept low enough not to cook the tissues, but to simply gently melt the fat out of them. The product so prepared is commonly known as oleo stock. It is then seeded, as the term is used in the packing houses; that is, it is kept in a warm room for twenty-four to forty-eight hours, the temperature of that
100 room being so regulated that it solidifies into a soft, granular mass. It is then pressed, and the fluid portion which flows from the press is known as oleo oil. The hard portion which remains in the press cloths, is known as oleo stearine. Tallow oil, as I understand it, is the product prepared by pressing tallow—tallow, as I have known the term to be used, is that product prepared by rendering beef fat in a closed tank under a pressure of steam. An oil prepared by pressing that in a similar manner to that used for pressing oleo oil, would be tallow oil. Tallow oil—in the rendering of tallow oil, the tissues are cooked by high heat and pressure of steam. The fatty tissues are thoroughly cooked and disintegrated, and all of the fat is cooked out of them. The

tallow has a characteristic cooked odor and taste, due to the cooking of the tissues in the tank, which is totally absent in the oleo oil. The object of rendering the stock for the oleo oil at the low temperature, is to prevent the strong cooked flavor of tallow from being developed.

Q. When you make an examination of a sample of oil, how do you determine whether that is tallow oil or oleo oil?

A. Solely by taste and odor.

Q. State the differences.

A. The oleo oil has a bland, mild, beefy flavor, a very pleasant and agreeable flavor and odor, while the tallow oil or tallow has a strong, cooked, what might be described as a tallowy flavor. The two are characteristic and decidedly different.

Q. Is there any difference in color?

A. Yes, there is a difference in color and appearance. That is harder to describe, but the oleo oil or oleo stock has what
101 might be described as a clear, bright color, while the other is more of a gray, less clean and bright appearance.

Q. Is there any difference in the way that the two oils melt, on inspection?

A. The tallow oil that has been prepared by pressing from tallow would probably melt perfectly clear, just like the other. There should be no difference.

Q. What grade of oleo oil would you say that this particular sample was that you took?

A. It corresponded in character to what is commonly known as No. 2 grade.

Q. No. 2 oleo oil?

A. No. 2 oleo oil.

Q. What other grades are there?

A. There is the No. 1 or extra, or commonly sold under the label of extra, the extra No. 1 and the No. 3, the extra No. 1 being the best made. The No. 2 is what its name implies, the second grade, but comprising probably the bulk of the manufacture, and the No. 3 is a low grade.

Q. Will you state what those different grades are used for?

A. They are all, so far as I know, used for the manufacture of oleomargarine.

Q. Do you know whether they have any other uses?

A. They find some use in the preparation of compounds and shortenings, and I believe that some are used directly for shortening as such.

Q. Without having anything done to the oleo oil?

A. Without having any other treatment.

102 By the Court:

Q. Are they used in the arts?

A. Not oleo oil, so far as I know. If I may explain, in use in the arts tallow oil would be equally applicable to and could be had at cheaper prices. The oleo oil requires a certain amount of care

and particular attention in the manufacture, that is not necessary for the other. That makes it more expensive.

By Mr. Price:

Q. Have you examined other samples of shipments made by the Pittsburgh Melting Company to Daniel Loeb of Holland, since January 15, 1915?

A. Yes, I examined several other samples of other shipments.

Q. Referring to your notes, if necessary, will you state how those samples were taken and identified, and what the results of the tests were?

By Mr. McClay: Objected to as incompetent and irrelevant and not pertinent to any issue involved in this case.

By the Court: How is that material?

By Mr. Humes: There is a preliminary injunction here and this bill is asking for a perpetual injunction. It may refer to any shipments that may be made at any time. It is asking for a perpetual injunction to restrain the Government from interfering with any shipments that they may make in the future.

103 By Mr. McClay: Any shipments similar to the character to the shipments made on January 15th, and the complainant's testimony is to the effect that there is only one grade of tallow oil or oleo oil made.

By the Court: I will hear what you have to say on this, but the bill seems to go further. I suggest to counsel for the defendants that if there are any differences in the samples taken from different shipments, the witness' attention ought to be directed to that, instead of repeating the same methods of treatment. Proceed.

By Mr. Price:

Q. When did you next examine the samples?

A. The next lot of samples were received on the 19th of—I examined a lot of four samples, sampled at New York on the 17th of February. They were received by me on the 19th of February, and examined the same day.

Q. Did you make the same test as before?

A. I made the same test as before, and found approximately the same thing.

Q. What would you declare the product to be, from your examination?

A. Oleo oil, an edible product.

By Mr. McClay: Objected to. Three times the witness has used in his testimony statements which are in point of fact con-
104 clusions. Now it is very material that these men who are testifying here, shall testify to facts and not conclusions, when they are talking about "edible."

By the Court: The witness should show wherein they differed from previous samples, or whether they were exactly alike. I understand that counsel for plaintiff is objecting to the opinion of the

fact witness, because he is a fact witness, as to the fact that it is an edible product.

By Mr. Price:

Q. Did you find the same physical and chemical properties in these samples as in the samples taken on January 15th?

A. They were identical to the samples taken on the 21st of January.

Q. What grade of oleo oil did you find them to be?

A. No. 2 oleo oil.

Q. When did you next examine samples of the same nature?

A. The next lot were received on March 8th, and examined on March 10th.

Q. You may state whether or not your test of those samples showed the same physical and chemical properties as the previous inspections of this product of the Pittsburgh Melting Company.

A. They were identical with the previous samples.

Q. When did you next examine samples of the Pittsburgh Melting Company product?

A. The next samples on April 21st, this sample.

105 By Mr. McClay:

Q. Where did you get those samples?

A. They were taken at New York City by Inspectors Buckley and Gibson of the New York force, and sent to me under seal and marks of identification which tally with those I found on the receipt of the same in the laboratory.

Q. You were not present at the time of the taking?

A. No. They were sent under seal, by the New York force.

By Mr. Price:

Q. What identification marks did these samples bear when you opened them?

A. There were six sample containers wrapped in paper. The paper was sealed with green wax, and impressed with an impression of a brass brand of Establishment 417. Inside the paper wrapper was the tin sample container labeled with the name of the product, date and place of sampling, and the initials of the persons sampling.

Q. What are those initials?

A. J. G. and M. J. B. Besides that, each container was marked with the in-tials M. J. B. marked on the tin with an indelible pencil, and the initials J. G. scratched on the tin.

Q. What you have just said regarding the samples taken in April, does that apply to the samples taken in February and March, about which you have testified?

A. Yes. They were marked in the same way, except a different brand was used in each case; that is, the establishment number; each was marked with the same kind of brass brand, an impression
106 on the same kind of a brass brand, but the establishment number of that brand was a different one in each case.

By Mr. McClay:

Q. What was the establishment number?

By Mr. Price:

Q. State in each case what the numbers were.

A. The shipment of February 19th was marked, the seals were marked with the impression of the brand of establishment 454; March 8th, the impression was that of a brand of establishment 967.

Q. Did you make an examination of a fourth lot of samples of the product of the Pittsburgh Melting Company?

A. There was a fourth lot received on the 30th of April, opened and examined on May 1st, and those were wrapped and sealed in the same manner as before, the number of the brand being 19-I.

Q. You may state what examination you made and whether you found the same results at that examination.

A. I made the same examinations of the samples taken January 21st, and found the same results.

Q. Are you familiar with the uses of tallow oil and oleo oil?

A. I am familiar with one use of oleo oil. It is used in the manufacture of oleomargarine. I am not particularly familiar with the use of tallow oil, because as made in the establishments under Government inspection, tallow oil is invariably an inedible product, and as such we do not examine it in the laboratory. It is only seldom that samples come in for laboratory examination.

107 Cross-examination by Mr. McClay:

Q. Where were these tierces at the time you obtained the tallow or oleo oil in New York? Were they in the cars?

A. No, they were on the ground, beside the tracks in the freight yards.

Q. Did you obtain any permission of the Pittsburgh Melting Company to the removal of the bungs from their casks?

A. No, indeed.

Q. You did it entirely on your own motion, without any previous authority and without any request; is that right?

A. I did it from order of my chief.

Q. Who is your chief?

A. Dr. Stedden.

Q. But you did it?

A. I did it.

Q. The remainder of the other samples which you examined you didn't procure at all?

A. I didn't procure them. They came to me in the mail, with these marks of identification on them.

Q. Where did you acquire your knowledge of the difference between oleo oil and tallow oil?

A. In the line of my duties as an inspector of the Bureau of Animal Industry.

Q. That is all you know about it? You can't refer to any work on the subject which distinguishes between oleo oil and tallow oil?

A. I can.

Q. What?

108 A. The Modern Packing Houses, written by F. W. Wilder and published by Nickerson & Collins Company, Chicago.

Q. Is that the only one?

A. The International Library of Technicalities of the Packing House Industries, published by the International Text Book Company, Scranton, Pa.

Q. This International concern, is it, that has been appearing in the public print of late?

A. It is the International Text Book Company of Scranton, Pa.

Q. Oleo oil is obtained from what kind of fat?

A. It is obtained from beef fats.

Q. Tallow oil is obtained from what fat?

A. Beef fats.

Q. Do they look alike?

A. They look very much alike.

Q. What do you mean by "much alike?" What is the distinguishing characteristic or difference in their appearance?

A. There is very little, if any, distinguishing characteristic in their appearance.

Q. What is the distinguishing characteristic in their ingredients?

A. They are made from the same thing.

Q. And there isn't any difference, so far as their ingredients are concerned?

A. None at all.

Q. But oleo oil is sweeter smelling, cleaner, than tallow oil, according to your view?

A. As I found it.

Q. In other words, tallow oil is spoiled, isn't it?

A. Tallow oil I wouldn't say is spoiled.

109 Q. Then what has happened to it?

A. It has been rendered in a different manner, and shows the characteristics of that rendering.

Q. What characteristics are there present in tallow oil that are not present in oleo oil?

A. A strong cooked odor and flavor, totally distinct from that of oleo oil.

Q. What do you mean by totally distinct from oleo oil?

A. Well, they are different; they are plainly apparent to the taste and to the smell.

Q. In other words, oleo oil is pure oil, isn't it, and tallow oil isn't; isn't that the only difference?

A. I wouldn't say that.

Q. Isn't the only difference between them the difference between a good piece of beef and a piece that has been slightly spoiled?

A. That is the usual difference.

Q. In other words, about a good piece of beef there is no odor except the beef odor, and about a bad piece or slightly spoiled piece there is an odor of decaying meat matter?

A. Yes.

Q. And that is the difference, from your standpoint, between oleo oil and tallow oil?

A. That is the difference I have found.

Q. Now, the reason that they don't render oleo oil at about 155 degrees is to preserve it in the best possible shape for sale, isn't it?

A. Exactly.

Q. Now, what is the temperature at which tallow oil, as you term it, is rendered?

A. I haven't in mind the temperature. As I remember,
110 though, it is around 280 Fahrenheit. The custom is to speak of it by the pressure of steam, and I believe the ordinary pressure of rendering is forty pounds pressure. That corresponds, as I remember, to approximately 280 Fahrenheit.

Q. To what uses can tallow oil so rendered, as you have described it, be applied that oleo oil cannot be applied to?

A. I think none. I believe the oleo oil could be used for any purpose, could be used for any purpose that tallow oil could.

Q. Do you know of them using oleo oil in the manufacture of soaps?

A. I have never known of it being used that way.

Q. Did you ever hear of it being used that way?

A. I have heard of some of it that became spoiled being used that way. I have never heard of an actual case of a good oleo oil going into soap.

Q. Do you know of any oleo oil being used by manufacturing establishments?

A. No.

Q. You have heard of tallow oil, have you?

A. I have heard of tallow oil.

Q. Did you ever hear of oleo oil being used for the manufacture of tooth pastes and powders?

A. No.

Q. Never heard of that?

A. No. I am not familiar with the manufacture of those, however.

Q. Isn't it a fact that the purer the oil the better it is for the fine toilet soaps?

A. I think so. I can't tell you that.

Q. You don't know?

111 A. I don't know.

Q. Now, the fact is that the worse the oil, the more acid it contains, isn't that a fact?

A. Not necessarily. An oil may be badly rancid and have a very little percentage of free acid. Conversely, an oil may have a considerable percentage of free acid and be perfectly free from rancidity.

Q. Isn't it a fact that the more rancid it becomes the more free acid it contains, and it may become so rancid that it contains free acid to the extent of from 35 to 50 per cent.?

A. That is possible.

Q. What effect has the free acid upon its use for mechanical purposes?

A. Free acid would attack the bearings or other surfaces used for lubricating, and injure them. Free acid is objectionable.

Q. Oleomargarine is manufactured how?

A. Oleo oil is melted and it is mixed with neutral lard and cotton seed oil, or with neutral lard only, churned with milk, worked and salted.

Q. Are there manufactories in this country for the purpose of making oleomargarine?

A. Yes, a number of them.

Q. It is put through a distinct process different from that by which tallow oil or oleo oil is manufactured, isn't it? In other words, it has to go through an entirely different process?

A. It has to go through a further process in manufacturing. The manufacture of oleo oil is a step toward the manufacture of oleomargarine; but having the oleo oil, you must go further and churn it.

112 Q. Churn it, and what else do you do? Do you heat it, and to what extent?

A. It is heated barely enough to melt it.

Q. What proportion of tallow or oleo oil enters into oleomargarine?

A. Well, the proportions vary a great deal. I couldn't give you the exact figures. The oleomargarine contains approximately 85 to 90 per cent. of fat, and the proportions of oleo oil in that fat mixture varies considerably.

Q. It is about 40 per cent., isn't it?

A. I think 40 per cent. is probably nearly an average.

Q. And then it contains, in addition to that, lard and cottonseed oil, and contains butter?

A. Varying amounts of butter and cotton seed oil.

Q. Then it is sold to the public in that form?

A. Yes.

Q. Is tallow oil commonly used as an article of food?

A. Tallow oil, as I know it, is never used as an article of food.

Q. Is oleo oil commonly used as an article of food, other than used in the manufacture of oleomargarine?

A. I believe not.

Redirect examination by Mr. Price:

Q. In the January 15th, 1915, shipment, from which you personally took samples, what was written on the tierces?

A. The heads of the tierces were painted white. They were
113 blue, painted white on the ends. On each tierce was marked on one head "D. L." enclosed in a diamond shaped mark.

Q. What does "D. L." mean?

A. I don't know. That was the mark I saw on the tierces.

Q. Was that stenciled or painted on?

A. Painted or branded with a stencil. Then was the word "gross"

and a number. Below that another number, and below that the word "inedible." On the other end they were branded in the same way, "Tallow Oil Inedible." Two of the 100 tierces were also marked on one side "B. & O. 14244."

Q. In the making of tallow oil and oleo oil, what is the difference between the kind of receptacles used respectively?

By Mr. McClay: Before permitting a question of that sort to be asked, I desire an opportunity to cross-examine the witness about his knowledge.

By the Court: Very well.

Cross-examination (as to competency) by Mr. McClay:

Q. What rendering establishments of this character have you any knowledge of?

A. Swift & Company, Chicago.

Q. How long were you there?

A. I visited there from time to time as an inspector.

114 Q. An inspector?

A. Yes. My work was Bureau Inspector.

Q. What other place?

A. Armour & Company, Chicago.

Q. When did you visit that?

A. In 1908.

Q. Have you been in it since?

A. Not since.

Q. Where else?

A. Morris & Company, Chicago. G. H. Hammond Company, Chicago. Pittsburgh Packing Company, Pittsburgh. D. B. Martin Company, Philadelphia.

Q. And you merely visited these places, did you?

A. I spent some days in some of them.

Q. Doing what?

A. Looking over and observing the process of manufacture.

Q. Of this particular product?

A. Of this particular product.

Q. In Swift & Company's, when were you there last?

A. I was there last in 1908.

Q. When were you in the others last?

A. The Chicago houses were all in 1908. The other houses were at odd times since then. I haven't any record with me, and couldn't tell you definitely exactly what the times were.

Q. You have never been engaged in the business yourself, have you?

A. No.

Q. And you know nothing about the process of manufacture, other than what you observed on those casual visits?

115 A. They were not casual visits. I was sent there particularly for the purpose of observing in order that we might know at first hand how things were done, how they were made.

By Mr. Price:

Q. You have also read literature on the subject, have you?
A. Yes.

By Mr. McClay:

Q. Did you ever see any tallow oil as you have described it, manufactured in any establishment?
A. Yes.
Q. Where? At these various places?
A. Armour's and Swift's at Chicago.
Q. In each of them?
A. In each of them.
Q. Tallow oil as you have described it?
A. Yes.
Q. They didn't do any seeding in the instances you observed, did they?
A. They called it graining. It was the same process.
Q. The same process as seeding?
A. The process of slow solidification at a temperature, at the right temperature to put it in a favorable condition for pressing.
Q. Did they remove any of the hard portion from the softer portion?
A. Removed the hard portion from the softer by a process of graining or seeding and pressing.
Q. Do those concerns manufacture oleo oil at all?
A. Yes. They manufacture oleo oil.
116 Q. Do they put them through the same process?
A. The same process as I have described for oleo oil.

By Mr. Price:

Q. Is that the same process they use for tallow oil? What is the difference between the process in making tallow oil and oleo oil?
A. The whole difference is in the process of rendering and in the cleanliness and the care with which the different products are handled.
Q. What different kinds of kettles are used respectively for the tallow and for the oleo oil?
A. The tallow was rendered in steam tanks under pressure, the oleo oil in an open kettle.
Q. What difference is there between the temperature at which the two are rendered?
A. A difference of approximately 130 or 140 degrees, the oleo oil being rendered at about the temperature of 145 or 150; the tallow at 40 pounds steam, or about 280.
Q. Can you, in examining the samples of a given oil, form an opinion about the qualities of that sample, as to whether it has been rendered at a high temperature under pressure or apparently low temperature in open tanks?
A. Yes; the difference is distinct and characteristic.
Q. What characteristics?
A. The product rendered at a high temperature has a strong,

tallowy, cooked flavor. The other has a mild, bland, sweet flavor. The two are distinctly different.

117 By Mr. McClay:

Q. Do you mean to tell me that in these different packing establishments they have two different processes by one of which they manufacture oleo oil and by the other tallow oil?

A. Yes.

Q. You say that under oath, sir? In other words, to give tallow oil a bad smell and serve no purpose, they would put it through a process of manufacture different from that of oleo oil, and thus obtain a lower price?

A. I say that it is put through a different process.

Q. I am asking you whether they have in Swift & Company's two different processes, one for the manufacture of oleo oil and the other for the manufacture of tallow oil?

A. Yes, they do.

Q. Will you tell me why a manufacturer is fool enough to produce a product like tallow oil, which sells at a very much less price than oleo oil, and use a process different from that which he adopts for the manufacture of oleo oil?

A. For the manufacture of tallow oil they use fats that will not make oleo oil, they are not good enough.

Q. They could put it through the same process if they wanted to?

A. They could, but they wouldn't get a product that they could sell as oleo oil, out of it.

Q. And it is the bad fat in the tallow oil that gives it the bad odor?

A. It is the bad fat that gives it the bad odor, if it has one, but if you would put good fat through the rendering process of rendering at a high temperature you would get the strong cooked flavor.

118 Q. But you would get a much inferior article, wouldn't you?

A. You would get an inferior article.

Q. What is the purpose of making an inferior article, when you want to market as good an article as you can?

A. They consider that the steam rendering process gives them the best result from the fats that they have to use, I suppose, or they wouldn't use it.

Q. That is, the bad fats?

A. The bad fats, the fats that won't make oleo oil. They select the best fats for oleo oil, and they use the inferior fats for the other product.

Q. And they make grease out of that, but they can't make any fine soaps or things of that kind, can they?

A. I have never followed it as far as the soap factory.

Q. Did you ever follow oleo oil or tallow oil into any of the manufacturing processes?

A. None, except following the oleo oil through the manufacture of oleomargarine. My work is limited to fat inspection, and I

have not attempted to follow it through the manufacturing processes. I learned something about them as a matter of general information, but my work doesn't deal with them directly.

Q. And so far as you are concerned, you have no knowledge from the character of your work, of anything other than the oleo oil or tallow oil that enters into oleomargarine?

A. I wouldn't exactly say that. I have a knowledge of the proportions of tallow oil, as I testified before.

119 Q. But you don't know anything of any purpose to which it is applied, other than oleomargarine?

A. Well, tallow oil is not used for oleomargarine.

Q. Oleo oil is?

A. Oleo oil is. It is also used as an ingredient of shortening and to some extent by itself for shortening.

Q. In what factories?

A. I have in mind the establishment of Swift & Company at Syracuse, New York. They put out a mixture of oleo oil and oleo stock.

Q. They sell that ——

A. As shortening.

Q. Swift & Company?

A. It is the concern that goes under the name of Syracuse Rendering Company. It is commonly understood to be owned by Swift & Company.

Q. Do you know whether that goes through a different process after it is sold?

A. That is sold just as such. They mix sufficient oleo stock with the oleo oil to harden it to a thick consistency, and sell it as shortening in that form.

Q. Is that the only concern you know?

A. That is the only concern I know. I have received a number of shortening compounds that were stated to contain oleo oil.

By Mr. Price:

Q. Did you find that they did contain oleo oil?

A. It wouldn't be possible to identify oleo oil with a mixture of several other fats.

120 *Testimony of Michael J. Buckley.*

MICHAEL J. BUCKLEY, a witness called on behalf of the defense, having been duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. What is your occupation?

A. I am a meat inspector on the staff of Dr. Thompson of New York City, United States Bureau of Animal Industry.

Q. How long have you been there?

A. I have been there since 1911, November.

Q. Before that where were you?

A. I was appointed as a meat inspector in September, 1906. My appointment read for East St. Louis. I was there for a period of a week, and I secured a transfer to Chicago, and I was stationed at Chicago for approximately a year, in the Hammond establishment there, covering the refining and the handling of fats. From there I was transferred to Richmond, Virginia. I was there supervisor of meat inspectors, but originally I was appointed as a meat inspector there, and I covered the various establishments there. From that place I resigned, and I went back home. My mother happened to be very ill at the time.

Q. Have you in that time examined samples of oils and fats?

A. Yes, sir.

Q. To what extent?

121 A. Well, I couldn't really just state how much I have examined.

Q. I mean in a general way.

A. In a general way, many times daily, up to about a year ago. Now I am on the import meats, and I don't handle fats or oils so frequently, but previous to that I would probably have an inspection of oleo oil several tierces a day.

Q. Do you know oleo oil when you see it?

A. Yes, sir.

Q. Did you in January, 1915, take a sample from a shipment made by the Pittsburgh Melting Company to Rotterdam, Holland?

A. Yes, sir.

Q. Tell us about taking those samples.

A. I met Mr. Kerr in the office, and carried the bag—We secured samples. We went to the Baltimore & Ohio yards at Staten Island, and I went to the gentleman there, the local agent, Mr. Evans, and I told him what I wanted. He told me the goods were down in the yards. So I went down there with Mr. Kerr, and I had a tryer. In the meantime I had spoken to Mr. Kerr about having a man to open the packages, so there was a cooper sent along with us and the packages were opened, and I used the tryer to bring the blocks out, and we put them into cans and I put the tops on and put them in Mr. Kerr's bag. Mr. Kerr was there all the time. When we finished the samples, Mr. Kerr took the bag over the ferry, St. George's Ferry, up to our office, and from there to Washington.

Q. What would you call that product?

A. Oleo oil.

122 Q. Did you sample it yourself physically?

A. Yes, sir, I smelled and tasted it. It had all the characteristics of oleo oil.

Q. Of what grade?

A. The grade commonly known as No. 2.

Q. Did you take samples subsequent to this time from shipments made by the Pittsburgh Melting Company?

A. Yes, sir, we took subsequent samples, after that.

Q. Will you refer to the identification marks which you put on those samples?

A. On the second shipment?

Q. Yes, in February.
A. In February, 454.
Q. How many tierces were there in that shipment, and how many samples did you take?
A. There were four samples taken of that. There were 150 tierces in that lot.
Q. This is the shipment of February 17th?
A. Yes, sir.
Q. How many samples did you take?
A. We took four samples of the lot.

By Mr. McClay: I don't understand about this number.

By Mr. McClay:

Q. What is that number you speak about?
A. It is a brass brand known in the Department as No. 3. We use it for branding sausages and different kinds of meats.
Q. Does it belong to yourself?
A. Yes, sir, it is a Bureau brand.
123 Q. And you put the brand on, did you?
A. We put the brand on up at the office, on the packages.
Q. What do you mean by establishment number?
A. That is the establishment that is listed in the Bureau's directory?
Q. In your own directory?
A. The United States Bureau of Animal Industry's record.

By Mr. Price:

Q. When did you next take samples from the Pittsburgh Melting Company's shipments?
A. The next sample we took on March 5th.
Q. How many samples?
A. We took samples of the 200 tierces. They were consigned to O. Hagensted, Copenhagen, Denmark. We took four out of that lot.
Q. What identification mark did you put on them?
A. I scratched my initials with an instrument, with a pen knife, M. J. B., on the tin, on the container.
Q. What establishment number did you use?
A. On this lot here we used establishment 967.
Q. Did you test this physically yourself?
A. Yes, sir, I made a physical inspection of it, and it bore all the characteristics of the previous consignment.
Q. When did you next take samples from the Pittsburgh Melting Company's shipments?
A. The next samples were taken on April 20th. This lot was a consignment of 300 tierces. It was consigned to Daniel Loeb, and the same carrier, the Baltimore & Ohio. We marked the
124 samples of this lot 417, establishment 417. The samples were sealed the same as the previous lot, with paper and cord, and wax dropped on and the impress of the brass brand used on the wax.

Q. Did you use any initials?
A. On this lot I initialed them M. J. B.
Q. When was the next time that you took samples?
A. The next consignment was on April 27th. This lot was marked with establishment No. 99, and the initials of the inspectors, M. J. B. and J. G. were scratched on the containers.
Q. You may state whether the physical properties of all these samples which you took at the various times mentioned, were the same.
A. Yes, sir.
Q. You may state whether or not this is the same kind of product which is ordinarily passed in inspected establishments by Government inspectors as inspected and passed.
A. Yes, sir, it bore all the same characteristics as the regular U. S. inspected and passed oleo product, oleo oil product. As far as taste, color, texture and appearence went, it had all those characteristics, and if the stamp were on it I would have stamped it as an edible product.

125 *Testimony of Arthur S. Thatcher.*

ARTHUR S. THATCHER, a witness called on behalf of the defense, having been duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. What is your profession and occupation?
A. Chemist in the Bureau of Animal Industry of the Department of Agriculture.
Q. Where did you study chemistry?
A. In George Washington University.
Q. How long?
A. Five years.
Q. Where have you been engaged since you graduated from there?
A. In the Bureau of Animal Industry, in the meat inspection laboratory.
Q. You may state whether you have examined samples of oils and fats?
A. I have, yes.
Q. To what extent approximately?
A. Probably about 200 samples a year.
Q. Did you examine samples that were taken from the Pittsburgh Melting Company's shipments in the early part of this year?
A. Yes, sir.
Q. Relate how those samples came into your hands.
A. I was called into Mr. Kerr's laboratory, and he had the sealed packages there. He opened them in my presence and
126 took out his sample for analysis. I examined the sample before he took any out, looked at it, and he took his sample out, after which I took out my sample.

Q. Did you make separate examinations then?

A. Perfectly separate, yes.

Q. Taking the samples which you examined in January, what were the results of your examination?

A. The sample was a pale yellow fat of grainy texture, and had a pleasant, fresh beefy odor and taste, melted clear, and the odor and taste of the hot fat were practically the same as the cold fat; that is, they were pleasant and mild, and like the odor of hot fresh beef fat; that is, I found no evidence of rancidity, and the free acids ran from 1.02 to 1.44 per cent.

Q. How about the iodine number?

A. I did not do that. I was simply asked to examine it as to edibility.

Q. You have heard the testimony of Dr. Kerr. Did you make tests of the samples on the same dates as he has testified to?

A. Yes, sir.

Q. Of the same product?

A. Yes, sir.

Q. State whether you found any different characteristics in those specimen examinations from those you have just mentioned.

A. No.

Q. What would you call the product that you examined?

A. Well, from my experience, I would say that the sample was similar to the oleo oils which have passed through my hands in the laboratory.

127 Q. Of what grade?

A. I wouldn't like to say what grade. I haven't had any technical experience, and I wouldn't be prepared to state the grade. The samples were undoubtedly of as good grade as we commonly pass as edible and satisfactory to the Government.

Q. Would you have passed this product as an edible product?

A. Certainly.

By Mr. McClay: I move that be stricken out. It is wholly immaterial what he would have done.

By the Court: Suppose he would have passed on it, how is it material to this case?

By Mr. Price: His testimony shows that the product was edible.

By the Court: Edible according to h. standard.

By Mr. Price:

Q. For what purpose are samples of oils such as this sample submitted to you?

A. They are all for edible purposes.

Q. I don't mean that. I mean what is in general the purpose of your examination—not in these particular samples, but speaking generally of all samples?

A. The samples are taken by the inspectors in the official
128 establishments, and are submitted to us to confirm their inspection that the sample is in a uniform and satisfactory condition for human consumption.

Q. You say fit for human consumption?
A. I mean edible, that the sample is edible.

By Mr. McClay: I move to strike out so much of the witness' testimony as relates to these fats being edible, as that involves merely a conclusion upon his part, from his construction of what constitutes edible meat or meat fat products for human consumption, as used in the Act of Congress.

By the Court: I will have to sustain the motion. I will hear you, Mr. Price. Is he to construe the Act of Congress? That is the question.

By Mr. Price: He obtains the facts upon which the Government acts.

By the Court: Then let him testify to the facts. He passes on the purity of the product that is submitted to him for consideration, and applies the tests and compares it with the standard of the Department. I cannot see why he couldn't give his opinion as to whether it was fit for human consumption, but he is giving standards.

129 By Mr. Price:

Q. I will ask you whether in your opinion the samples which you have just testified to, were fit for human consumption?
A. They were.

Cross-examination by Mr. McClay:

Q. What do you mean by "fit for human consumption?"
A. I mean that so far as my experience would go, the sample was prepared carefully, out of sound fats, and in a careful manner and had been taken good care of, subsequent to its manufacture.
Q. It wouldn't kill a man if he took a piece of it in his mouth?
A. It wouldn't.
Q. In other words, it wasn't poisonous in any way?
A. No.
Q. But you don't mean to have this Court infer that oleo oil or tallow oil, or either, is commonly used as food for human consumption, as such, without being mixed with something else?
A. I don't know whether I would be allowed to bring in my own experience, but as I was raised, my mother didn't consider lard in itself a proper thing to be used alone, and we used beef fat carefully rendered, in the mixture with lard.
Q. That is, to grease the skillet?
A. Well, in that case it would be used alone; but it was carefully rendered——

130 Q. I am asking you whether oleo oil or tallow oil as we sold it, assuming it is oleo oil, is a common food?
A. Not that I know of. You mean without further process?
Q. Yes.
A. It is not a finished product, so far as I know.
Q. People don't eat it, do they, generally?
A. Well, not so far as I would know. They eat a similar product.

Q. What do they eat?
A. What I said; they render fat of fresh beef.
Q. But that is simply by way of greasing the skillet?
A. No, this was rendered. This that we used at home was always rendered in just the same way——
Q. You didn't use it as butter?
A. No.
Q. And you didn't use it as meat?
A. No.
Q. You simply used it to cook things in?
A. Yes; used it in shortening for pies.
Q. Did you ever suffer from acute indigestion as the result of using that shortening?
A. No, not at all.

131 *Testimony of Dr. James Gibson.*

Dr. JAMES GIBSON, a witness called on behalf of the defense, having been duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. Are you an inspector of the United States Bureau of Animal Industry?
A. I am.
Q. Where are you located?
A. At present in New York.
Q. Did you in the early part of this year, take samples from shipments of the Pittsburgh Melting Company?
A. I did.
Q. Whom did you go with?
A. Mr. Buckley.
Q. Will you as briefly as possible state the dates on which you took the samples, and what identification marks you put on the samples?
By Mr. McClay: We are not going to dispute that Mr. Kerr and Mr. Buckley took the samples.
By the Court: Ask him if he heard the testimony of Mr. Buckley, and if he was with him, and if it is correct. I understand counsel is not going to dispute the fact that these samples were taken
132 at the different dates and that the samples as described by the witnesses are properly described.
By Mr. McClay: That is right.

By Mr. Price:

Q. You heard the testimony of Mr. Buckley?
A. I did.
Q. You may state whether or not that testimony regarding the taking of the samples, was correct?
A. In every particular except the first. I can't vouch for that

because I wasn't present, the first samples in January. As to the subsequent samples, I can vouch for his statement.

Q. Did you make a physical examination of these samples?

A. I did.

Q. Did you taste them?

A. I tasted and smelled them.

Q. What were the characteristics as to color, taste and so on?

A. The ordinary No. 2 oleo oil, as far as I could see.

Q. I mean, state the physical characteristics as to color, taste and so on.

A. A pale yellow, bland, and had all the characteristics of that particular line of stuff, No. 2 oleo oil.

(No cross-examination.)

133 *Testimony of Paul Rudnick.*

PAUL RUDNICK, a witness called upon behalf of the defendant, having been duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. What is your profession and present occupation?

A. I am chief chemist for Armour & Company, Chicago.

Q. Where did you study chemistry?

A. At the Chicago College of Pharmacy, where I graduated in 1893, and at the University of Illinois, where I graduated in 1899.

Q. How long did you study at those respective institutions?

A. Two years in the former, and four in the latter.

Q. Where were you employed after you left the last school?

A. With E. Snyder & Company, manufacturers of candles and oils and glycerine, for two years, and since that time with Armour & Company.

Q. What was your position first with Armour & Company?

A. I was first made assistant to the chief chemist, and in 1907 I succeeded him in that position.

Q. How long have you been with Armour & Company altogether?

A. Fourteen years.

134 Q. Do Armour & Company make oleo oil?

A. They do.

Q. Do they make tallow oil?

A. They do.

Q. Will you state what are the characteristics of oleo oil?

A. Oleo oil at ordinary temperatures is a soft, grainy fat of sweet and neutral taste, and of a color which varies from a light yellow to somewhat deeper shades than light yellow. Tallow oil is a fat of very similar consistency, but of a more or less disagreeable taste, flavor, and usually of either a dead white or a grayish color at ordinary temperatures.

Q. How about the acidity of oleo oil?

A. The contents of free fatty acids in oleo oil normally varies from about one-half to three-fourths per cent.

Q. Have you made analyses of tallow oil and oleo oil frequently?

A. I have made them at comparatively frequent intervals.

Q. What are the different grades of oleo oil?

A. The grades as we make them are extra, prime, and a third grade known as Atlas oil.

Q. What would No. 2 grade of oleo correspond with in your factory?

A. It would probably very close to that of prime oil.

Q. How is oleo oil made in your factory?

A. The fat from cattle is cleaned by washing as rapidly as possible, and then chilled. It is then taken from the abbat-oir to the oleo department and is hashed and is rendered in open kettles at a comparatively low temperature.

135 Q. What temperature about?

A. Around 150° Fahrenheit. The fat is then settled out, usually by the addition of more or less salt, and clarified, and is then transferred to containers in which it is allowed to crystalize or seed, as it is technicallyknown. Then this mass is placed in a press and is pressed. The oil which flows through the press cloths constitutes the oleo oil, and the harder fat remaining behind in the press cloths is oleo stearine.

Q. How is tallow oil made?

A. Tallow oil is made by pressing tallow which has been rendered from beef fat in pressure tanks with steam, under pressure, and the tallow is then allowed to crystalize or grain, as it is technically known, in a manner somewhat similar to that of oleo oil, and is then pressed in a similar manner to oleo oil, the oil running out constituting tallow oil, and the harder fat remaining behind in the press cloth, is known as tallow stearine.

Q. If you were given an animal oil, could you tell by inspecting it whether it is tallow oil or oleo oil?

A. Under all ordinary circumstances I should be able to.

Q. Could you tell by inspecting it whether it was made under steam pressure at a high temperature or in open kettles at a comparatively low temperature?

A. Yes. That is quite readily discernible.

Q. What characteristic would indicate that to you?

A. Tallow or tallow oil are quite readily recognized by the highly cooked flavor they have, and usually by the dead white or grayish white color which they possess, particularly after they are in the form of the finished product.

136 Q. Do you know the uses of tallow oil and oleo oil?

A. Oleo oil is used chiefly for the manufacture of oleomargarine, or butterine, commonly known, though it is used to some extent for manufacturing shortening compounds for bakers, and in some cases it is used for shortening by itself. Tallow oil, on the other hand, is used for illuminating, for lubricating and other mechanical purposes.

Q. Do you know where most of the oleo oil is shipped?

A. A large portion of oleo oil is shipped abroad, and particularly

to Holland, but a very large proportion is also used in this country for the manufacture of oleomargarine.

Q. Where do you ship most of your oleo oil?

A. Nearly all the shipments that I remember went to Rotterdam.

Q. Do you know of any shipments to oleomargarine manufacturers in this country?

A. I do not remember any definitely now, but we do manufacture oleomargarine ourselves from a very large part of our home production.

Q. That is, Armour & Company itself makes oleomargarine from the oleo oil which they produce?

A. Yes.

Q. What do you regard as the best test of oleo oil?

By Mr. McClay: Objected to. What do you mean by that?

By Mr. Price: If he can determine whether a given product is oleo oil.

137 (Question read.)

A. The first thing I should want to know would be its flavor, next its color, and finally its physical and chemical characteristics.

By Mr. Price:

Q. By flavor do you mean taste and smell?

A. By flavor I understand both odor and taste.

Q. Do you know whether recently a denaturing agent has been used in Chicago, to denature tallow oil?

A. We used a denaturing agent commonly known as power distillate for denaturing fats from condemned animals.

Q. What is that power distillate?

A. It is a substance very similar to kerosene, but quite a bit heavier; that is, it has a higher specific gravity, has a higher weight as expressed in pounds per gallon, and it has a decidedly more disagreeable taste, and is not as highly refined a product as kerosene, and is much less volatile.

Q. What proportion is used?

A. We are required to use one-half of one per cent. of the amount of fat in the material to be rendered.

Q. Does the use of power distillate affect the value of the product?

A. It does not.

Q. As I understand it, after the power distillate is used, the product could not be used for food purposes?

A. It cannot.

Q. I ask you whether the use of the power distillate affects the value of the product for industrial purposes?

138 By Mr. McClay: If he knows. This is not a matter for an expression of opinion. It is a question of fact.

By the Court: If he knows, he can answer the question.

A. It does not affect it for industrial purposes.

By Mr. Price:

Q. About what proportion of the oleo oil that you produce is turned into oleomargarine in your plant?

Objected to as immaterial.

Objection sustained.

By Mr. Price: I can surely show that a large proportion of the oleo oil produced in this large packing establishment is turned into oleomargarine.

By the Court: He has already testified how they use the oleo oil; how much they use in their plant for their product, is wholly immaterial. It might be interesting as a fact, but it has nothing to do with the issue here. I sustain the objection.

Exception noted.

By Mr. Price:

Q. If you were told that a certain product was obtained by melting or rendering beef fat and had a grainy texture and soft, buttery consistency at ordinary room temperature, or laboratory
139 temperature, that its color was pale yellow, that its taste and odor were sweet and agreeable and nearly neutral, and it melted clear that it was free from rancidity, that it contained from 1.02 per cent. to 1.47 per cent. of acid, that its iodine number was about 47, could you name that product?

A. That would be——

By Mr. McClay: You have simply been asked a simple question.

By the Court: Answer yes or no.

A. I could.

By Mr. Price:

Q. What is that product?

A. That would be oleo oil.

Q. And is that an edible product?

Objected to.

Objection sustained.

Q. Would that product be fitted for human consumption?

Objected to.

By the Court: Ask him whether it is used for food.

By Mr. Price:

Q. Could that article be used for food purposes?

Objected to.

140 By the Court: Ask him whether he knows it is.

By Mr. Price:

Q. Is that product used for food purposes?

A. It is.

Q. In what way?

A. It is used substantially for the purposes which I have described for oleo oil.

Q. I don't recall just what it was you said. In addition to oleomargarine, has it any other food use?

A. To a certain extent in the manufacture of baker's compounds for shortening, and also a certain extent, a small extent, for shortening purposes directly, and it is also used for cooking, the variety commonly known as deep frying, but that is only an occasional, incidental use.

Cross-examination by Mr. McClay:

Q. What do you mean by saying that it is "fit for human consumption such as I have just described?" Be specific.

A. I said, "such as I have just described for oleo oil."

Q. In other words, it is necesary to mix it with other ingredients and have it go through another process of manufacture, before it can be produced into what is known as oleomargarine that is sold and used by the public in place of butter?

A. Yes, certainly.

Q. Now, is oleo oil used as a food product anywhere in the
141 United States, or any place of which you have any knowledge?

A. It is in the sense that——

Q. I am asking you whether it is as a food product?

A. It is.

Q. Used on the table?

A. It is.

Q. How?

A. In the form of shortening.

Q. Now, describe shortening.

A. Shortening is any fat that is used in baked cereal foods, to give them the peculiar brittleness or shortness when it is eaten.

Q. Is oleo oil eaten as food?

A. Not very often.

Q. Has it ever been?

A. Oh, yes.

Q. As food?

A. For spreading on bread.

Q. Where?

A. I have seen it eaten.

Q. When?

A. At various times.

Q. When? You are testifying to facts here.

A. I have seen it eaten in my own home when I brought it home for that purpose.

Q. When?

A. Sometime within the first two or three years after I came to Armour & Company.

Q. How long ago?

A. Probably ten or twelve years ago.

Q. How often have you used it since?
142 A. Not since that time.
Q. When did you use it before?
A. Not before that time.
Q. You never used it before?
A. No.
Q. What other persons did you know used oleo oil in the way you described, as a food?
A. Other persons to whom I gave it, but I don't recall who they were.
Q. Did they ever use it before?
A. Not to my knowledge.
Q. Did they ever use it since?
A. Not to my knowledge.
Q. Did they use it only once?
A. Only about that time.
Q. What is the difference in the ingredients of oleo oil and tallow oil?
A. They have no ingredients. They are ingredients.
Q. What is the——
A. They are single substances.
Q. They are single substances, and are they the same?
A. No, they are not the same.
Q. What is the difference?
A. Oleo oil is an edible product, and tallow oil is not necessarily an edible product. It is usually and ordinarily not an edible product.
Q. Are the ingredients of tallow oil and oleo oil the same?
A. They are no ingredients to tallow or oleo oil.
Q. Isn't there one ingredient?
A. It is an ingredient itself.
Q. Is the ingredient in tallow oil the same as the ingredient in oleo oil?
143 A. I can't answer that question.
Q. Why?
A. Because it is not good English.
Q. Put it in your own form, and let me have good English.
A. If you will ask the question in such a way that I can understand your purpose, I can answer it.
Q. Wherein is the English bad?
A. Because you speak of ingredients in a single substance.
Q. Isn't it possible for a substance to have but one ingredient?
A. Not that I know of.
Q. You haven't heard of that?
A. No, sir.
Q. What is the meaning of ingredient?
A. It is one of two or more substances entering into some other product.
Q. It is necessarily then, one of two or more substances?
A. Yes, sir.
Q. What would you call it? Would you call that an element then?

A. No, sir.
Q. What would you call it?
A. A material or substance.
Q. What then is the difference between the material or substance of oleo oil, and the material or substance in tallow oil?
A. Chemically they are substantially iden ical.
Q. What do you mean by the word "substantially indentical?"
A. Well, I mean just what they say, substantially identical.
144 Q. Are they identical?
A. No, they are not.
Q. What is the difference?
A. The difference is in their physical characteristics.
Q. What is the physical characteristic that distinguishes them?
A. Edibility
Q. What is edibility?
A. The question of whether it is acceptable to the ordinary palate for consumption.
Q. And what makes it acceptable to the ordinary palate for consumption?
A. The flavor.
Q. And what produces the flavor?
A. Chiefly the manner of handling the fat prior to rendering and a certain manner of rendering.
Q. What do you mean by the manner of rendering?
A. The question of whether it is rendered at such temperature as not to spoil it to the ordinary palate.
Q. In other words, the difference is this: one is good, sound, pure and wholesome, and has a pleasant smell, and the other has not?
A. Not necessarily.
Q. What do you mean by "not necessarily?" Give us your qualification.
A. Tallow may be edible.
Q. It may be edible?
A. It may be.
Q. But when is it edible?
A. When it has an acceptable taste, a good, clean, sweet
145 taste.
Q. Then you would call it oleo oil?
A. No, sir.
Q. Why wouldn't you call it oleo oil?
A. Because if it is tallow, the accepted meaning of the word tallow means that it was rendered in a pressure tank under comparatively high steam pressure, and therefore, under a corresponding high temperature, and possesses a marked strong cooked flavor.
Q. And it was only the temperature at which it was rendered—is that right, that would distinguish it?
A. That would distinguish it, yes.
Q. If the tallow had been rendered at the same temperature, it would have been oleo oil, that is, if it had been rendered at a temperature of 145 to 155 or thereabouts, it would have been oleo oil?
A. If the raw material were——

Q. If it is rendered at 280 it is tallow oil; is that right?
A. It would be tallow, yes, sir.
Q. Tallow oil?
A. Not tallow oil, but tallow.
Q. You manufacture your own oleomargarine?
A. We do.
Q. And you use your purer and better product of oils in the manufacture of oleomargarine?
A. We use oleo oil in the manufacture.
Q. And the refuse of the fat that you get which is slightly spoiled or tainted, you produce into tallow oil?
A. Not necessarily.
Q. What do you mean?
A. Because the material for tallow may be just as good as that for oleo oil.

146 Q. Why don't you produce oleo oil then?
A. Because it brings a higher price as oleo oil.

Q. If you get good material in tallow oil, and it brings you a higher price than oleo oil, why don't you manufacture oleo oil?
A. We do.
Q. Then you don't mean what you said, "not necessarily." You use the tainted fat in your tallow oil?
A. Not necessarily, no. The fat from the different parts of the carcass of the cattle yields different qualities of tallow, and not all fat from the carcass of the cattle is entirely suitable for oleo oil. It doesn't all give the nice, desirable, bland flavor.
Q. But suppose you used the fat from the different parts of the animal in the production of this oil, what would you call that?
A. I am afraid I don't understand the question.
Q. You say there is a difference depending on where the fats are obtained from the animal?
A. There is a difference, yes.
Q. Suppose you took fat from one animal, put it all together, rendered it and produced an oil, what would you call that oil?
A. It depends on the temperature at which you render it.
Q. Say 145 to 155?
A. I don't believe I can answer that question, because I have never known it to be done.
Q. You don't know?
A. No, sir; I don't know that.
Q. You don't know anything about rendering the oils outside of your own establishment, do you?
A. Not very much.

147 Q. You, therefore, decline to express an opinion as to whether it would be tallow oil or oleo oil?

A. Well, if you took all the body fat from cattle, I don't think I ought to express an opinion on that.
Q. Why?
A. Because it is never done commercially.
Q. Suppose I told you that it was done commercially by the Pittsburgh Melting Company; what would you say?

A. I still would have to decline to express an opinion on that.
Q. You wouldn't know?
A. No, sir.
Q. Therefore, you wouldn't be able to say whether it was tallow or oleo oil?
A. No, I don't know how it would grade as to flavor.
Q. Is there such a word in the English language as denature?
A. It is a very ordinary word, as far as I know.
Q. Did you ever look in the dictionary for it?
A. Never even troubled to.
Q. Suppose you do, and if you find it, call my attention to it.
A. I was trying to find the dictionary a while ago.
Q. When you speak about denaturing, you only denature the fats of animals that have died, or have been killed because they were diseased?
A. Yes, those that are condemned.
Q. And the Act of Congress says they must be destroyed?
A. I don't know that.
148 Q. In other words, you preserve them for the purpose of selling them for such purpose if you can obtain a purchaser?
A. Yes.
Q. What was the name of that article that you use for denaturing?
A. Power distillate.
Q. What is the difference between that and crude oil?
A. What kind of crude oil?
Q. That is pumped out of the hills all around this country.
A. Yes, there is a big difference.
Q. Kerosene, where is that obtained?
A. That is obtained by distilling crude petroleum.
Q. What is the difference? You say it is pretty nearly kerosene?
A. It is very similar to kerosene. It has a similar, though less refined odor.
Q. You say that doesn't interfere with the selling price of it?
A. No, not for industrial purposes.
Q. Would you call the manufacture of fine soaps an industrial purpose?
A. Yes, sir.
Q. Would you consider the manufacture of tooth pastes and powders an industrial purpose?
A. I would not.
Q. What would you call that?
A. Well, I should think that would come under the head of a medicinal preparation or pharmaceutical preparation, perhaps.
149 Q. Would you call the manufacture of glycerine or nitroglycerine an industrial purpose?
A. Nitroglycerine would be.
Q. But the glycerine would not?
A. Not the refined glycerine for pharmaceutical purposes.
Q. How would it affect the manufacture of nitroglycerine to have this stuff mixed with it?

A. I can't testify to that, as I haven't enough experience in that.

Q. It would not assimilate, would it?

A. Assimilate what?

Q. These oils, it wouldn't go in; in other words, you would have two distinct matters or substances, this particular thing that you say is necessary to denature the oil, and the oil itself. Do you ever sell any of your product to the oil companies, the various oil companies in this country?

A. Yes, sir.

Q. How would it affect it for their purpose?

A. Not at all.

Q. What is the difference in the price between oleo oil and tallow oil?

A. I don't know anything about that.

Q. You don't know?

A. No, sir.

Q. All that you know is that the oleo oil which you manufacture, you use for oleomargarine?

A. And for the other purposes which I have mentioned.

Q. And that oleo oil that you use for oleomargarine is taken from a particular part of the carcass of the animal?

150 A. Particular parts, I should say.

Q. And you are not able to express an opinion whether an oil would be tallow oil or oleo oil if the fat which was used in its manufacture was taken from the entire animal?

A. I wouldn't care to express an opinion as to whether the flavor of that would make it oleo oil or not.

Q. What is the word "unsaponifiable?"

A. It means—well, it is usually restricted to those constituents of fat which are not capable of being converted into soap.

Q. And in issuing your specifications for a fat which you will accept, you specify that no fat must contain more than three per cent. of unsaponifiable matter?

A. We do not.

Q. What do you specify?

A. We don't recognize ordinarily in selling fats any restrictions as to unsaponifiable matter.

Q. But in buying fats—do you buy any fats?

A. Yes, we do.

Q. Do you ever analyze it for unsaponifiable matter?

A. Very much.

Q. Why do you do that?

A. We do that when we sell fats because certain buyers of fats insist on a limitation of unsaponifiable matter.

Q. What is that limitation?

A. They include the unsaponifiable matter, the total impurities, but there is no established limit, no standard established limit for impurities.

Q. Why do they refine it then?

A. The buyer does that.

151 Q. Suppose a soap manufacturer wants to buy fat or oils for manufacturing fine toilet soaps. What would he prescribe as the percentage of unsaponifiable matter?

A. He ordinarly purchases on sample, and then he tests the sample for total impurities, and some of them insist on including the unsaponifiable matter in the total impurities, and then they insist that the maximum of total impurities shall not exceed that shown by the samples submitted on analysis.

Q. Don't they have anything definite with regard to the percentage of unsaponifiable matter?

A. There is no definite, accepted standard.

Q. Is it one, three, four or five per cent?

A. Well, the highest percentage on low grade greases, that is, on which a sale is made, is about three per cent., but the fat is not necessarily rejected because it contains more than three per cent. There is a deduction made for any excess over three per cent.

Q. Now, this denaturing agent would be included in that unsaponifiable matter, wouldn't it?

A. Actually not, because on making actual analyses of unsaponifiable matter of fats denatured with power distillate, there is substatially no increase in unsaponifiable matter over the content of the fat before it was denatured.

Q. What is this agent, this denaturing agent?

A. It is a distillate from crude petroleum. It is a water-white liquid which has the smell and taste similar to that of kerosene, only worse.

Q. And this oil would necessarily have the smell of that kerosene, wouldn't it? You couldn't get rid of it?

A. The odor is very slight in the rendered fat.

Q. It is there, isn't it?

152 A. I don't think you could detect it.

Q. How do you know? Could you detect it?

A. Sometimes I can, but sometimes I am in doubt; that is, the odor, I mean, in the rendered fat.

Q. You only use that in connection with diseased animals; you are not required to use it with regard to any other fat?

A. Not so far as I know.

By Mr. Price:

Q. Does it cost much to denature tallow oil by means of this power distillate?

A. I can't answer that, because I don't know what the power distillate costs, but it is a very cheap oil. It is cheaper than kerosene.

Adjourned to meet at ten o'clock, Thursday, July 8, 1915.

153 Morning Session.

Thursday, July 8, 1915.

Paul Rudnick—Recalled.

PAUL RUDNICK, recalled, testified as follows:

Direct examination by Mr. Price:

Q. I believe you testified yesterday that you did not know whether the word denature is used in the dictionary. Have you looked that up since then?

A. I have.

Q. What do you find?

A. I find that the Century Dictionary gives the definition for the words "denature," "denaturize," "denaturent," "denatured."

Q. You might read one of the definitions given there.

A. The Century Dictionary defines "denature" as the same as "denaturize," and it then defines "denaturize," that denaturization is the act or process of denaturizing, as salt in Germany or seed oils in Spain, specifically the addition to alcohol of something which renders it unfit for use as a beverage, thus exempting it under a special legislation, as in England, France, Germany and the United States, from taxation, so as to permit its economical use as a fuel or in the manufacture of varnishes, chemicals, and so forth.

154 Cross-examination by Mr. McClay:

Q. Did you find this under the name of "denature?"

A. I don't recall just what the words are, but I looked for the word "denature," and found all those definitions there copied on that sheet.

Testimony of Wm. H. Irwin.

WILLIAM H. IRWIN, a witness called on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. What is your profession?

A. Chemist.

Q. Where are you employed at present?

A. With Swift & Company, Chicago.

Q. In what capacity?

A. Assistant chemist.

Q. How long have you been with Swift & Company?

A. Sixteen years.

Q. During that time have you been in the chemical laborataory?

A. Almost continuously for the last sixteen years.

155 Q. Did you make a study of chemistry before you entered that employment?

A. Yes, sir.

Q. Where did you study chemistry?

A. University of Kansas.

Q. Do Swift & Company manufacture tallow oil and oleo oil?

A. They do.

Q. What is the distinction between them, both as to method of manufacture and as to the uses of those products?

A. The oleo oil is an open kettle product, and the tallow oils are made from tallow rendered in pressure tanks.

Q. Does that mean that tallow is melted at a higher temperature than the oleo oil?

A. It does.

Q. What respective uses are oleo oil and tallow oil put to?

A. Oleo oil is an edible product, and tallow oil is——

By Mr. McClay: Just a moment. I move to strike out that answer, for the reason that it is not responsive to the question, and secondly, it is a conclusion which the witness draws and which is the subject-matter in dispute in this case.

Motion sustained.

By the Court: The question was as to what are the uses.

156 (Question read.)

A. Oleo oil is used in the manufacture of oleomargarine and shortening compounds, and tallow oil is used for burning purposes and also in lubricating compounds.

By Mr. Price:

Q. If you were told that a certain product was obtained by melting or rendering beef fat; it had a grainy texture of soft buttery consistency at ordinary room temperature; that its color was pale yellow; that its taste and odor were sweet and agreeable; that it melted clear; that it was free from rancidity; that it contained from 1.02 per cent. to 1.47 per cent. of acid; that its iodine number was about 47; could you name the product?

A. I could.

Q. What product?

A. Oleo oil or oleo stock.

Q. What is the difference between oleo oil and oleo stock?

A. The oleo oil is manufactured from the stock by pressing the oil from the stock, leaving the stearine behind.

Q. Is that product such as I have described, fit for food purposes?

By Mr. McClay: Objected to. It is competent for the witness to testify for what purposes it is used and if it is commonly used for food and is ever eaten, how it is prepared, in order to be made proper for the human system.

Objection sustained.

157 By Mr. Price:

Q. Is there anything in that product which renders it unfit for human food?

A. There is not.

Q. Do you know whether such a product is used for food?

A. It is.

Q. In what way?

A. In oleomargarine and shortening compounds, and to a very limited extent in its original condition.

Q. Are you acquainted with the use of power distillate in your factory?

A. I am.

Q. State how that is used in connection with either of the oils mentioned.

A. It is not used in connection with either of the oils mentioned.

Q. How is it used then?

A. It is used in the condemned tanks where the condemned product is rendered.

Q. You put certain fat in a tank and add the oil or power distillate to that, and then the product is rendered from that?

A. It is.

Q. Does the addition of that power distillate affect the value of the product for industrial purposes?

A. It does not, materially.

Q. Do you know whether the power distillate adds any appreciable amount of unsaponifiable matter to the product?

A. It does not.

158 By the Court:

Q. Is oleo oil capable of chemical analysis?

A. Yes, sir.

Q. Is tallow oil capable of chemical analysis?

A. Yes sir.

Q. What is the difference between the chemical analyses of the two?

A. Very little.

Q. Is there any?

A. No, sir.

Cross-examination by Mr. McClay:

Q. Are you in the sales department of Swift & Company?

A. I am not.

Q. Do you know anything about the selling prices of the various products sold by Swift & Company?

A. No, I do not.

Q. You don't know anything about what affects the prices?

A. I don't know anything about the selling at all.

Q. Then why do you say that the presence of this denaturing agent doesn't affect the price at all?

A. Because a layman would not be able to distinguish the two

products, the same product rendered with the denaturing agent and without, unless he was an expert.

Q. Couldn't he smell it?

A. I don't believe he could.

Q. You can smell crude oil, can't you?

A. You can.

159 Q. And this is distilled from crude oil?

A. It is.

Q. Wherever kerosene or crude oil is present, there is some odor connected with it?

A. Yes, sir.

Q. If this were offered to purchasers who were engaged in the selling or manufacturing of fine toilet soaps, they certainly would discover it, wouldn't they?

A. I don't believe they would.

Q. You don't believe that manufacturers would discover it?

A. No sir. Their chemist might.

Q. Their chemist would discover it?

A. He might.

Q. They all have chemists?

A. Not all.

Q. All of the large ones?

A. All of the large ones do.

Q. And they are employed specifically for the purpose of ascertaining the presence of certain substances in the oils, aren't they?

A. Yes, sir; those that are detrimental.

Q. Would you say that the presence of this denaturing agent was detrimental or not detrimental to the manufacture of fine soaps?

A. Not detrimental.

Q. What do you know about the manufacture of fine to-let soaps?

A. Well, we have a large soap factory next door to the chemical laboratory, and we have——

Q. Have you had anything to do with that soap factory?

A. Well, in what way do you mean?

160 Q. Do you have anything to say or recommend about the presence of the substances that are to go into certain soaps?

A. We certainly do.

Q. I am asking you personally.

A. Whether I do?

Q. Yes.

A. I am not the chief chemist.

Q. Do you recommend the use of certain substances in order to make fine toilet soaps?

A. In his absence.

Q. When did you make a recommendation last, with regard to any toilet soaps?

A. I don't recall that I ever did.

Q. When were you in the toilet soap factory last?

A. A week before I came here.

Q. How often do you go there?

A. Practically every day.

Q. Neither oleo oil nor tallow oil is recognized as a common food—I mean distinct from its being used in certain compounds?

A. Neither one is used generally; no, sir.

Q. And they are not sold for human consumption as a food, independent of their compounds, now?

A. Well, I don't know as I can answer that.

Q. Why can't you answer that? Did you ever use it as a common food?

A. Yes, sir.

Q. How many times?

A. I expect fifteen or twenty.

Q. Twenty times in sixteen years?

A. Yes, sir; used it when I didn't have something better.

161 Q. Is oleo oil or tallow oil sold by retail grocers or wholesale grocers as a common food product?

A. It is not.

Q. You have an oleomargarine factory connected with Swift & Company?

A. We do.

Q. And you use all of your oleo oil in the manufacture of oleomargarine?

A. We do not.

Q. What do you do with the rest of it?

A. We export great quantities of it, and we also use it in shortening compounds.

Q. What are the shortening compounds in which you use that?

A. I am not familiar with the trade names.

Q. What do you know about it then?

A. I know that we use it.

Q. To what extent do you use it, how many gallons——

A. To a very large extent.

Q. What do you mean by "a very large extent?"

A. I should say it amounts to millions of pounds.

Q. In what time?

A. Annually.

Q. How do you know that?

A. Because I go out in the plant, in the butterine and oleomargarine factory where the shortening compounds are manufactured, the same as in other parts.

Q. What are the shortening compounds? You don't know the names of them?

A. No, sir.

Q. Do you know how they are manufactured?

A. Yes.

162 Q. How are they manufactured?

A. In a general way I know.

Q. How are they manufactured?

A. They are manufactured on the same principle as the butterine, with the exception that they don't use the finer products; the neutral lard is left out. They use cotton oil.

Q. What else do they use in connection with the oleo oil in shortening compounds?

A. That is the only one I would definitely say—cotton oil.

Q. What is the process of manufacture of these shortening compounds?

A. The oils are mixed the same as they are in the manufacture of what is commonly known as butterine.

Q. It is the same thing?

A. No, sir; not exactly the same thing, because the oleomargarine has different compositions, different ingredients. There is no butter in our shortening compounds.

Q. And you don't know the names of those shortening compounds?

A. Well, I believe that I could give you one; Bakers' Special, I think is one.

Q. To whom are they sold?

A. Sold to the bakers.

Q. You use a particular portion of the fat of the animal for the manufacture of oleo oil, do you?

A. We do.

Q. What portion of the fat of the animal do you use for manufacturing oleo oil?

A. The caul and ruffle fat and the heart fat.

Q. What are the caul and ruffle fats?

163 A. I don't care to qualify as an expert on where the different fats come from.

Q. You don't know anything about that?

A. I don't care to qualify.

Q. Do you know anything about it? It is not what you care. It is what the fact is.

(Witness does not answer.)

Q. What fat do you use in the manufacture of tallow oil?

A. We use the fats from the killing beds.

Q. What is the killing bed?

A. The slaughtering beds.

Q. You use all the fats, do you?

A. No, sir.

Q. What part of the fats do you use?

A. I stated I didn't care to qualify as an expert on tank house procedure nor oil house procedure.

Q. You don't know?

A. I do know in a general way; yes sir.

Q. Why don't you want to qualify?

A. Because I don't care to.

Q. You simply don't propose to be cross-examined; is that it?

A. I didn't say anything of the kind.

Q. You simply don't wish to qualify at all or testify about that?

A. I don't care to testify.

Q. Not because you don't know; that is not the reason?

By Mr. Price: This witness was not offered to testify with regard to the fats.

164 By the Court: He is offered to testify as to the differences between oils, and the cross-examination is proper. They have a right to cross-examine him as to his knowledge and what goes into different oils.

By Mr. McClay:

Q. It is not because you decline to be cross-examined. Now, what is the real reason?

A. I stated that I only knew in a general way.

Q. That is, you have no special knowledge on the subject?

A. I know that the caul and ruffle fat and heart fat go into the composition of oleo oil, and they are the principal ones; yes, sir.

Q. But you have no knowledge of where the caul and ruffle and heart fat come from, what part of the animal they come from?

A. I do just in a general way.

Q. Where?

A. The heart fat comes from around the heart.

Q. Where do the caul and ruffle fat come from?

(Witness does not answer.)

Q. The difference between oleo oil and tallow oil is this, the oleo oil which you manufacture is the product of particular fats taken from certain portions of the animal. The tallow is manufactured from fats which are unfit for oleo oil, from the fats taken from the remaining portions of the animal. Is that correct?

A. Correct; Yes, sir.

165 Redirect examination by Mr. Price:

Q. You have stated, however, that there is a difference in the mode of manufacture?

A. Yes, sir.

Q. Is there any difference in the physical properties of the two oils?

A. Yes, sir.

Q. You may state whether oleo oil is a food product in the same sense as lard is a food product.

By the Court: Mr. Price, that is a question that is not for the witness' determination.

By Mr. McClay: It is objected to.

By Mr. Price:

Q. You may state whether or not oleo oil is used for some of the purposes for which lard is used.

A. Yes, sir.

Recross-examination by Mr. McClay:

Q. Give us the specific purposes.

A. I will have to qualify that; in shortening compounds mentioned previously.

Q. But it is not used in the form in which it is originally produced?

A. Not generally; no sir.

166 Q. And it is only used after it enters into a compound?

A. Generally speaking, yes.

By Mr. Price:

Q. The same is true of lard?

A. Lard is used just as it is. You wouldn't necessarily have to compound lard. Pure lards are used after they are refined.

Q. Do they make compounds of lard?

A. Yes, sir.

167 *Testimony of G. G. Fox.*

G. G. Fox, a witness called on behalf of the defendant, having been duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. What is your occupation?

A. I supervise the lard and oil refineries for Armour & Company, and I am associated with the sales department.

Q. How long have you been with Armour & Company?

A. Fourteen years.

Q. Have you anything to do with the sales department?

A. Yes, sir; I am associated with the sales department.

Q. Can you state which is the more expensive mode of manufacturing, the open kettle or the closed kettle method?

A. The open kettle method is the more expensive.

Q. Why is it more expensive?

A. Well, there is more handling, and based upon yields of various fats, it shows that the cost per hundred pounds is greater than would be found in closed kettle rendering, where larger quantities are used.

Q. Does that make a difference in the cost of the finished product?

A. It makes a difference in the cost of the production of the finished product, yes.

168 Q. Is there any difference between the cost of tallow and oleo stock?

By Mr. McClay: Objected to, unless this witness shows his qualifications.

By the Court: You can examine him as to his qualifications.

By Mr. McClay: Go on.

(Question read.)

A. You mean the value of it on the market?

By Mr. Price:

Q. Yes.

A. Yes, sir.

Q. What is the difference?

A. Well, right now I would call it a difference of about two cents per pound greater for oleo stock than that of ordinary tallow.

By Mr. McClay:

Q. That is the selling price?
A. Yes.

By Mr. Price:

Q. What are the different products which Armour & Company manufacture from these different fats?
A. Well, they manufacture oleo stock, prime tallow, and the lower grades of tallow, such as No. 2, and different greases
169 commonly known as yellow or brown greases. There is also meat fat stock which is made from beef cattle as well.
Q. Are you acquainted with the effect of the use of power distillate on the price of the products?
A. I am in respect to lubricating oils.
Q. What is the effect?
A. There is no effect upon the value of the lubricating oil made from the fat which has been denatured with power distillate, so far as our experience goes.

(No cross-examination.)

Testimony of J. R. Powell.

J. R. Powell, a witness called on behalf of the defense, having been duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. What is your profession?
A. Chemist.
Q. Where did you study chemistry?
A. University of Illinois.
Q. What is your present occupation?
A. Chief chemist for Armour Soap Works.
Q. How long have you been with the Armour Company?
A. About ten years.
170 Q. In the same capacity during that time?
A. I was at the packing house about half a year previous.
Q. In your soap factory what material do you use in making soap?
A. Chiefly tallows, greases and inedible fats.
Q. Do you use any oleo oil?
A. Not under that name.
Q. Do you use tallow oil?
A. We possibly have. It is usually offered as a soft tallow. The tallow oil is offered as a soft tallow.
Q. Are you acquainted with the effect of power distillate on these oils?
A. We have used oils containing power distillate.
Q. You may state whether or not the use of power distillate affects the product in your works?

A. We consider it does not.

Q. What proportion of power distillate do you use in your works?

A. We do not use the power distillate. We simply receive greases that have been so treated, fats.

Q. Do you know of your own knowledge what proportion of power distillate is used in those greases?

A. The Government regulation requires one-half of one per cent. to be added to the material rendered.

Q. Do you know of your own knowledge whether that power distillate used in that proportion would affect the value of your soap products?

A. It would not.

Q. Does it make any difference in unsaponifiable matter?

A. Not an appreciable difference.

171 Q. Does power distillate have any effect on glycerine in your department?

A. We do not find that it did. Glycerine made from fats, or lyes from fats that had power distillate in them, showed no difference from glycerine made from other fats.

Q. For what purpose do you make glycerine?

A. Both for pharmaceutical and technical use, and dynamite.

Cross-examination by Mr. McClay:

Q. This power distillate is used exclusively in the treatment of tallows obtained from diseased animals, isn't it?

A. I don't qualify in packing house practice.

Q. You don't know?

A. No.

Q. Would you use the fats or tallow oils obtained from diseased animals, in the manufacture of your fine toilet soaps?

A. I do not know the actual source of tallows and oils received. We simply test them as they come in. If they are suitable for our use, they are so used.

Q. You don't know whether any of the fats or oils which have been treated by this denaturing agent, are used in your soaps?

A. I do.

Q. What do you say, yes or no?

A. I know that we use fats in our soaps that have been denatured.

172 Q. In other words, you have used fats in your soaps which have been treated in that way and which have been obtained from diseased animals?

A. We have used fats that have been treated in that way.

Q. It doesn't make much difference to you where you get those fats, so you get the soap?

A. If the fat is sweet and suitable for soap, no.

Q. So you can sell it?

A. So it is salable, yes.

Q. And it is immaterial to you whether your soap is manufactured out of fine oleo or tallow oil, or from the fats of diseased animals?

A. The better grades of soaps are made from better grades of fats than the coarses grades. Does that answer your question?

Q. No, it does not. I said it is immaterial to you whether your fine toilet soaps are manufactured from a good, pure grade of oleo or tallow oil, or from an oil or fat that is obtained from diseased animals?

A. It is immaterial to us, if the fat is sweet and clean when it reaches our factory.

Q. Is the fat sweet and clean if it is obtained from the diseased animal?

A. I do not know whether our fats come from diseased animals. I have no occasion to know.

Q. It is not your business to inquire?

A. No, sir.

Q. Can you observe this denaturing agent in the oil which you use?

A. Not readily.

Q. Can you observe it?

A. It can be determined.

Q. How can it be determined?

173 A. Very possibly by odor; decidedly by taste.

Q. You have no general knowledge of what manufacturers and other people desire in the way of tallow oil or oleo oil, when they want to purchase it for mechanical or industrial purposes, do you?

A. No.

Q. You say that the presence of this denaturing agent has no perceptible effect on the unsaponifiable quantity in any fat sold or offered for sale?

A. It does not, as determined——

Q. What becomes of it?

A. Possibly part of it is volatilized in rendering; possibly part of it may show up in volatile matter on examination of the fat.

Q. It is still in the fat, is it not?

A. Part of it may be.

Q. What do you mean by the word "appreciable?"

A. Actual determination of the unsaponifiable in fats, treated with this power distillate, has shown a difference of only a few tenths of one per cent.

Q. The amount put in is one-half of one per cent?

A. Yes.

Q. And the amount of unsaponifiable matter that you find there, is only increased to the extent of a few tenths—five tenths?

A. Not five-tenths.

Q. Four-tenths?

A. Not over twenty-five hundredths, to my knowledge.

Q. In other words, it is reduced to a half or a quarter per cent?

A. A quarter and less.

174 *Testimony of Edw. E. Galbreath.*

EDWARD E. GALBREATH, a witness called on behalf of the defense, having been duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. What is your occupation?
A. Butterine maker.
Q. With what company?
A. The Neucoa Butter Company.
Q. Where located?
A. In——, New Jersey.
Q. What is your connection with that company?
A. I am superintendent of the butterine plant.
Q. How long have you been with that company?
A. Since the 22nd of February this year.
Q. With what company were you before that time?
A. Jacob Dole Packing Company of Buffalo.
Q. How long were you with them?
A. About two years.
Q. In what capacity?
A. I was foreman of the oleo oil, the neutral and the glue factory.
Q. With what company were you before then?
A. The Sulzberger & Sons, Chicago.
Q. In what capacity?
A. Foreman of the butterine department.
Q. Are you familiar then with the manufacture of oleomargarine?
A. Yes, sir.

175 Q. What oil do you use to make oleomargarine?
A. We use oleo oil, peanut oil, cotton seed oil, neutral lard and stearine; that is, the various grades. They don't use them in one grade, but there are various grades that take them all in.
Q. Then your present company do not use oleo oil at all?
A. They use no animal fats at all.
Q. What was the proportion of oleo oil that was used to make oleomargarine in Jacob Dole Packing Company's plant?
A. They didn't make butterine. They just made the oleo oils.
Q. What company were you with which did manufacture oleomargarine?
A. Sulzberger & Son, Chicago.
Q. In making oleomargarine there, how much of the finished product was oleo oil?
A. That depended a good deal on the grades; some as high as 80 per cent; some down as low as 20.
Q. What was the average?
A. The average was about 55 to 60.
Q. For what other purpose at the Chicago plant did you use oleo oil?
A. It was used in the manufacture of compound lards.

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Q. Do you know of any cases where oleo oil itself has been used as a food?

A. Yes, sir.

Q. Name them.

A. I have used it myself.

Q. How recently have you used oleo oil as a food?

176 A. About a year, not quite a year; I used it in Philadelphia and Buffalo.

Q. State in what way you used it.

A. Just as a shortening, in the place of lard in cooking.

Q. That is the only way in which you yourself have used it as a food?

A. Well, I have eaten it.

Q. Eaten it raw?

A. Yes, sir.

Q. When was that?

A. I worked in Armour's in Kansas City one winter, along about 1890. It was during the canning season, and they killed lots of animals on Saturday nights, and we hashed it; we hashed all the fats that was killed that day, not to hold any over on Sunday, and we worked from seven o'clock Saturday morning until some time Sunday noon without stopping. We would get so hungry we would go to our dinner pails and get crusts of bread and stick them in the hot oil and eat it. It tasted good, too.

Q. Where did you ship your oleo oil from the Jacob Dole Packing Company?

A. To the Friedman Company, Chicago, and to Rotterdam, Holland.

Q. What business is the Friedman Company in?

A. Manufacturers of oleomargarine.

Q. Do you know of your own knowledge what the oleo was used for that you shipped abroad?

A. No, sir.

Q. How do you distinguish oleo oil from tallow oil?

177 A. Well, tallow oil is, as I know it, an inferior fat and not as good as the oleo fats.

Q. When you examine oleo oil and tallow oil and compare them, what is the principal difference in their physical properties?

A. Well, the oleo oil has a bland and agreeable odor and taste, while the tallow oil has a tallowy, repulsive flavor and taste.

Cross-examination by Mr. McClay:

Q. You say you used this by dipping your bread into the oleo oil, in 1890?

A. About that time. I don't remember the exact date; 1890 or 1891.

Q. How often every week would you do that?

A. Whenever we got hungry and couldn't get anything to eat.

Q. How often?

A. Once a week anyway.

Q. You didn't use it as a general thing?

A. No.

Q. And you haven't used it since?
A. Not that way, no; because I never got that hungry since.
Q. You would have to be pretty hungry?
A. Well, I don't know. It tasted good at that.
Q. Did it produce indigestion?
A. No.
Q. You have a pretty good, stout stomach?
A. I don't know.
Q. Never troubled with dyspepsia?
A. No.

178 Q. This is used in the manufacture of what is known as lard compounds, is it?
A. Oleo oil?
Q. Yes.
A. Yes, sir.
Q. And how is lard compound manufactured?
A. It is manufactured from cotton seed oil and stearine and oils, tallow oil or tallow or oleo oils.
Q. It is put through a process very similar to the process that you adopt in manufacturing butterine or oleomargarine?
A. It is not exactly the same. The same process, but it is not even a similar one either. For compound lard the oil is refined. The animal fats go through a filter press, and is cleaned absolutely, and it goes into a mixing tank, and then from there over to the lard bolters; there is bine inside.
Q. What is the process of refining?
A. Refining what?
Q. Refining the oils—you say the oil is refined?
A. Yes, sir.
Q. What do you mean by that?
A. Pumped through a filter press.
Q. What effect does that have on the oil?
A. It takes out all the oil fibres, and like it had a dull color, and it brightens the color.
Q. Do you know what Fullers' Earth is?
A. Yes.
Q. Is any of that mixed with the oleo oil?
A. No. It is used in refining the cotton seed oil.
Q. It is never used in refining oleo oil?
A. Not in refining oleo oil; no, sir.

179 Q. How is it used, in connection with the oleo oil? Is it used at all?
A. I have seen Fullers' Earth used with oleo oil.
Q. Well, you say the oils are cleansed then. The fats are cleansed?
A. Sure.
Q. How do you clean those?
A. The fats are washed. They are washed in chilled water; first in warm water and then in cold water, before they are hashed.
Q. Then how are they treated?
A. For oleo oil?
Q. For the purpose of this lard compound.
A. Speaking of oleo oil, that is a different process from tallow

oils. The tallow oils are cooked in a pressure tank. That pressure tank fat is not hashed.

Q. Are you still confining your testimony to the subject of lard compounds?

A. I am just answering your questions.

Q. I ask you to tell the Court how lard compounds are manufactured.

A. I am not an expert on the manufacture of compound lard. That is a separate and distinct business from the butterine business.

Q. Therefore, you would hardly feel qualified to testify as an expert?

A. As to the manufacture of lard compounds; yes, sir.

Q. All that you know is how to manufacture oleo oil and tallow oil?

A. I know how to manufacture oleo oil and butterine.

180 *Testimony of Dr. John R. Mohler.*

Dr. JOHN R. MOHLER, a witness called on behalf of defendant, having been duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. What is your profession?

A. I am a graduate of the University of Pennsylvania, veterinary department, 1896.

Q. What is your present occupation?

A. At present I am assistant chief of the Bureau of Animal Industry, Department of Agriculture.

Q. Where have you studied since you left the University of Pennsylvania?

A. I took a two-year special course in medicine at the University of Marquette, and did special work at the French Government school at ——, France.

Q. Anywhere else?

A. That's all.

Q. How long have you been with the Bureau of Animal Industry?

A. Eighteen years.

Q. When were you appointed assistant chief of the Bureau of Animal Industry?

A. About a year ago. Previous to that time I was chief pathologist in the pathological division, for twelve years, engaged in research work.

Q. What was your work in that division?

A. Along the lines of bacteriology and pathology, research in infectious diseases of animals.

181 Q. Dr. Mohler, will you state whether or not there is any way of determining whether oils produced from beef fats are wholesome for human purposes, by testing and analyzing the oils themselves?

A. There is no possible way of determining that fact by such a method.

Q. What is the only possible way of determining whether those products are wholesome?

A. The only possible way of such determination is to have an inspection of the animal before slaughter, and a similar post-mortem inspection at the time the animal is being slaughtered.

Q. Why is that?

A. There are a number of diseases of animals which are only determined on ante-mortem inspection, in other words, while the animal is still alive, and there are other additional diseases that are only determined at the time of slaughter by the examination of the viscera and the tissues of the slaughtered animal.

Q. If oleomargarine is composed largely of oleo oil, and the oleo oil came from animals which had not been inspected either ante-mortem or post-mortem, would there be danger to people using oleomargarine as a food product?

By Mr. McClay: Objected to, for the reason that the witness has testified that he is a veterinarian, and a graduate of a veterinary college. He does not pretend to be an expert in the medical profession in the treatment of human diseases. He has not even testified that he ever treated a patient.

182 By the Court: Proceed.

By Mr. Price:

Q. Have you studied medicine?

A. I have.

Q. Where have you studied medicine?

A. Marquette University, in Wisconsin.

Q. What was the nature of your study abroad?

A. Along the lines of bacteriology and pathology and meat hygiene.

Q. Would that include the effect on the human system of the diseased meats?

A. It would include the effect of the consumption of diseased meat on the human system.

Q. How long did you study medicine at Marquette?

A. Two years.

By Mr. McClay: I want to cross-examine as to his competency.

Cross-examination (as to competency) by Mr. McClay:

Q. Did you get a diploma from Marquette?

A. No, sir.

Q. You say you studied two years?

A. Yes, sir.

Q. Did you ever practice medicine?

A. No, sir.

183 Q. You have been in the Department for sixteen or eighteen years?

A. Yes, sir.

Q. Your knowledge exclusively is confined, with respect to medicine, to what you obtained in your two years' course in the Marquette University in Wisconsin and also from what you have obtained in your experience as a member of the Bureau of Agriculture?

A. Yes, sir.

Q. You know nothing more about it, except from your general reading?

A. From literature on the subject and the general subject of meat inspection.

By Mr. Price:

Q. Have you written works yourself on the subject?

A. Yes, sir.

By Mr. McClay: I object to the witness. I do not think he has qualified.

(Question read as follows: "If oleomargarine is composed largely of oleo oil, and the oleo oil came from animals which had not been inspected either ante-mortem or post-mortem, would there be danger to people using oleomargarine as a food product?")

By Mr. McClay: Objected to for the further reason that it is incompetent and not material to any issue involved in this case.

184 By the Court: I have never known a case yet where a man was permitted to testify as an expert on the subject of disease, who hadn't treated a patient, but I will overrule the objection and note an exception for the plaintiff.

(Question read as follows: "If oleomargarine is composed largely of oleo oil, and the oleo oil came from animals which had not been inspected either ante-mortem or post-mortem, would there be danger to people using oleomargarine as a food product?")

A. There would be danger.

By Mr. Price:

Q. What danger?

A. Take the instance of a disease like anthrax of animals, which is directly transmissible to man. It is absolutely impossible by examination of the product of the fat to detect whether the animal was suffering with a disease like anthrax at the time of the slaughter of this animal. Anthrax is a contagious disease, transmissible from cattle to man, and the products, fat included, would be permeated with this bacteria and the spore of this intensely infectious disease. There are other diseases like rabies, foot and mouth disease, that are directly transmissible from animals to man, septicemia, pyemia, blood poisoning cases of that character, in which the fat product is as much involved as the meat product.

185 Q. Is there any chemical analysis that can determine the presence of those diseases in the finished product?

A. No, sir, there is none.

By the Court:

Q. Has the germ of anthrax been identified?
A. Yes, sir.
Q. Can it not be identified in lard or oleo, if it exists?
A. If it exists, by microscopic examination, by inoculation of experimental animals.
Q. Can it be determined in other ways?
A. No, sir, not in a chemical examination at all.
Q. Didn't Pasteur find the germ?
A. Yes, sir.
Q. And identified it?
A. Yes, and developed a vaccine for it, but it is impossible to determine it in the product by a chemical examination.

Cross-examination by Mr. McClay:

Q. Why is it impossible? You can't infect a human being except by the presence in an animal of bacteria or bacilli, can you?
A. That is true.
Q. And that must be alive?
A. Yes.
Q. Why can't you recognize it in fat or oleo oil or tallow oil?
A. I say there is no chemical method to determine it, because no one ever discovered it.
186 Q. How do you discover it in the animal?
A. By microscopical examination, not by chemical examination. You make smears and stain them with aniline dyes and put them under the microscope, but that is not a chemical examination.
Q. What is there in the process of the manufacture of oleo oil or tallow oil which prevents you from discovering them in the same way by a microscope?
A. You can make a microscopic examination, and if they were in that particular specimen you would find them, but you don't make a microscopic examination of those products.
Q. You make microscopic examinations of the animal, don't you?
A. Yes.
Q. And of the fat or beef of the animal immediately after it is slaughtered?
A. With the naked eye you can discover the disease. The disease is readily discernible with the naked eye examination.
Q. What is that? How can you tell that?
A. By the lesions produced in the viscera. The spleen is three or four times the natural size. It is dark and very much swollen. The tissues are inflamed. You find little endematous areas through the intestinal tract.
Q. The spleen may be enlarged from other causes?
A. Yes.
Q. That is not an uncommon thing?
A. It is not associated in other diseases——

Q. When you speak of the hoof and mouth disease, that was common here a few months ago, was it not?

A. Yes, sir.

187 Q. How many people did you know had that disease?

A. Well, I didn't know any personally, but the reports were not infrequent of the disease being found in man?

Q. What reports did you get on that?

A. Reports from our inspectors in the field. I was in Washington, but our inspectors reported cases of the disease in man, spread from the diseased animals.

Q. Your inspectors are just the ordinary individuals, selected from civil life, without any particular knowledge except what you communicate to them?

A. Not at all. They are medical men and veterinaries.

Q. All of them?

A. Not all of them. The men that were doing the work in the foot and mouth disease were principally veterinaries. A report I recall now was given by a man that had both degrees, Dr. Keene.

Q. And their reports were gathered not from what they saw themselves, but from newspaper reports?

A. No, sir. Their reports were given from actual observation of the cases.

Q. You know that?

A. I know that.

Q. How do you know it?

A. Because I saw the report of the individual I am speaking of now, Dr. Keene.

Q. And that is the only way you do know it, by seeing the report of Dr. Keene?

A. Yes, sir.

Q. And he said there was an individual in that district who

188 had the foot and mouth disease? Is that right?

A. Yes, that is right.

Q. And he was a horse doctor, wasn't he?

A. No, sir.

Q. What was he?

A. Both a veterinary and a physician, having two degrees, from the University of Pennsylvania and Georgetown Medical School.

Q. Was the foot and mouth disease communicated from animals?

A. Yes, sir.

Q. And you know nothing about the subject, other than from reports made by inspectors?

A. I know a great deal about the subject.

Q. I am asking you if you know anything about the subject of persons being affected by the foot and mouth disease, except by the reports of the inspectors, of actual cases?

A. In this present outbreak in the United States?

Q. Yes, or any other. Did you ever see one?

A. Yes, sir, I have seen it.

Q. Where?

A. I had it myself.

Q. When?

A. This October, from inoculation in calves, with the first material that came in.

Q. Outside of yourself—How did you get it?

A. I got it from the virus from the cattle.

Q. How did you get the virus?

A. The material was sent in for examination to Washington.

Q. You tasted it?

189 A. No, sir, I didn't taste it. The needle ran into my finger, and I got infected.

Q. What other instance do you know?

A. Of the disease in man?

Q. Yes.

A. The literature——

Q. Actually what you saw.

A. I told you before that my knowledge of the disease in man in this outbreak has come to me through reports of our inspectors, official reports.

Q. What I am asking, you insisted that you knew of actual instances.

A. I spoke of myself.

Q. Well, now, what other disease which human-kind is subject to, is derived from animals?

A. Rabies.

Q. What is that?

A. That commonly known as hydrophobia.

Q. Is that pretty common?

A. It is, among dogs. I have known it in the yards of the stockyards in certain sections of the country.

Q. What instances have you known of rabies being communicated to the human individual, actual instances I am speaking of, derived from the use of the fat of an animal that was killed?

A. I don't know any instances from the fat.

Q. What other diseases do you know of, what other diseases communicable from the animal to the human being?

A. Malignant edema.

Q. What is that?

A. A form of blood poisoning, caused by a spore-bearing germ like lockjaw.

190 Q. How many instances have you actual knowledge of?

A. I haven't any of my own personal experience, any actual cases.

Q. What other diseases?

A. A disease like cysticercus.

Q. What is that?

A. That is a parasitic disease of cattle.

Q. In what form does it appear in man?

A. It appears in the form of tapeworm in man.

Redirect examination by Mr. Price:

Q. Is oleo oil regarded by the Bureau of Animal Industry as a meat foot product?

By Mr. McClay: Objected to as incompetent and irrelevant.
Objection sustained.
By the Court: That is the same question over and over again that we have had, and the same ruling.
By Mr. Price: Will your Honor grant me an exception?
Exception noted for defendant-.

By Mr. Price: To preserve the record, if your Honor please,
191 we offer to prove by other witnesses that oleo oil is regarded in the administration of the meat inspection act by the Bureau of Animal Industry and the Secretary of Agriculture, as a meat *foot* product, and has been so regarded since the meat inspection act went into effect.

By Mr. McClay: Objected to as incompetent and irrelevant, and not the proper subject of an opinion or expression of opinion by the Bureau of Animal Industry, but must be determined by the Court from a reading of the Act of Congress and the testimony.
Objection sustained.
Exception noted for defendant-.

192 *Testimony of Nick Manesiotis.*

NICK MANESIOTIS, a witness called on behalf of the defense, having been duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. What is your full name?
A. Nick Manesiotis.
Q. What is your business?
A. Candies and baking.
Q. Where?
A. In Pittsburgh.
Q. You may state whether or not you use oils in your bakery?
A. Yes, we use oleo oil.
Q. Where do you obtain the oleo oil?
A. We take it from the Pittsburgh Provision Company.
Q. For what purpose do you use it?
A. For baking and cooking.
Q. How do you mean for baking purposes? Tell how you use it.
A. We bake our goods there, the baking stuffs. We just put it on the pans. We use it in our baking stuff. We bake candies and cakes, so we have to use that oleo oil.
Q. Do you use much or little of it?
A. We use much of it.
Q. About how much of it do you buy in a week, say?
A. We use over fifty pounds.
193 Q. In a week?
A. In a week.
Q. Do you use it in cakes?
A. In cakes, yes, sir.
Q. Do you use any butter in those cakes?
A. No, we don't.

Cross-examination by Mr. McClay:

Q. Where is your bakery?
A. On Market street, in the city; 203 Market street, Pittsburgh.
Q. Do you own it?
A. Yes, sir, I am one of them.
Q. How many more partners are there?
A. Four altogether.
Q. You buy this from the Pittsburgh Provision Company?
A. Yes.
Q. And you use as much as fifty pounds a week?
A. About that, yes.
Q. You use it in the place of what?
A. In the baking of cakes.
Q. Why do you use it—because you get it cheaper?
A. Yes, it is cheaper than the others. We have been trying for seven or eight years, until we find the best of all.
Q. The best of all?
A. The best of lard and everything.
Q. How long have you been using this?
A. Eight years.
194 Q. You have no knowledge of any other bakers using it, have you?
A. No, I don't know. We use it just for ourselves.
Q. How did the United States inspectors know that you use it?
A. They come into our place and tested it; they tried it.
Q. They just dropped in on you?
A. They came in. I don't know if anybody sent them. They just came in and tasted it.
Q. They wanted to know if you use oleo oil?
A. Yes.
Q. When did they come around?
A. I can't tell. I don't remember.
Q. Lately, was it?
A. Yes.
Q. That was the first time they had ever been around?
A. No, many times.
Q. What do they do around your place?
A. Just see what we do; see that we make clean stuff, so they find everything all right.
Q. Do they come around once a year?
A. I can't tell. I was working back in the factory. I can't say how often they come.
Q. What part of the business is yours?
A. Baking.
Q. You do the baking yourself?
A. Yes.
Q. You are the baker?
A. Yes, sir, and the candies, too.
Q. And you use it in around——
A. In pans.

195 Q. How do you put it in the pans?
A. Just put in the pans, and put around the cakes too.
Q. Just grease it, do you?
A. Grease it and put it into the cakes too.
Q. How do you get it into the cakes?
A. That is one thing, you never see that kind of cakes that we make, it is different altogether. If I told you how we use it, you can't understand how it is.
Q. You just use it in those cakes?
A. Yes, and for cooking, too.
Q. In the pans?
A. In the pans and in the cakes too.
Q. Well, you bake the cakes, do you?
A. Yes, sir.
Q. At what heat do you bake the cakes, what temperature do you bake the cakes at? How much do you heat it—five degrees or twenty-five or one hundred and fifty?
A. We don't have a thermometer there.
Q. You don't know?
A. No, but we have the regular time, leave them in so much time in the oven, an hour and a half.
Q. You leave them in there an hour and a half?
A. Yes, sir, in the oven.
Q. Heated by gas?
A. By gas, yes.
Q. Where were you born?
A. In Greece.
Q. How long have you been in this country?
A. About seven or eight years.
Q. Are you a citizen of the United States?
A. No, sir.

196 *Testimony of Frank Synodis.*

Frank Synodis, a witness called on behalf of the defense, having been duly sworn and examined through an interpreter, testified as follows:

Direct examination by Mr. Price:

Q. Where do you live?
A. 667 Linton avenue, East Pittsburgh.
Q. What is your business?
A. I have a grocery store and butcher shop.
Q. In your grocery store do you handle oleo oil?
A. Yes, sir.

By Mr. McClay: I want to cross-examine about his knowledge of oleo oil, before he testifies any farther.

Cross-examination (as to competency) by Mr. McClay:

Q. What is oleo oil; what is it made of?

The Interpreter: He says it has oil *oil* in it. He says he doesn't know what it is.

By Mr. Price: We would like to finish our direct examina-
197 tion.

By the Court: He has a right to cross-examine him as to his knowledge.

The Interpreter: He says if he could talk good English, he would read it.

By Mr. McClay: Read what?

The Interpreter: The oil. He doesn't know what mark is on there. It has "oil" on it—olive oil, I guess.

By the Court: What does the witness say? Not what you say.

By Mr. McClay:

Q. Ask him what he says: What mark is on it?

The Interpreter: He says oleo oil.

By Mr. McClay:

Q. What is oleo oil; what is it made out of?

The Interpreter: He says he doesn't know. That is the way he buys it.

By Mr. Price: He doesn't have to qualify as an expert.

198 By Mr. McClay:

Q. Have you got a paper on the bottle or box or can?
A. Yes.
Q. Where is it?
A. I haven t got it with me.
Q. From whom did you buy it?
A. Pittsburgh Provision Company.
Q. You don't know what is in it?
A. No, sir.
Q. Did you ever inquire what was in it?

The Interpreter: He says he don't know what it is at all. It looks like a butter, he says, something like that. It is a little thick.

By the Court: Proceed, Mr. Price.

By Mr. Price:

Q. How much of this oil do you buy in a week?
A. About fifty pounds in ten days, or in fifteen days fifty pounds; some days sell a hundred pounds in fifteen days, and some days fifty.
Q. Do you sell this product; do you sell this oil?
A. Yes, sir.
Q. How much of this oil do you sell in a week?
A. Fifty pounds a week.
Q. Do you sell it all to one person or to different people?
A. Sell to everybody.
Q. Do you sell lard to these customers?
A. Yes, sir.

199 Q. Do the same customers sometimes ask for lard and sometimes ask for oleo oil?

A. Anybody asking for lard and find out they get the other stuff, they use the other one; it is better.

Q. Is the oleo oil cheaper than the lard?

A. The same price.

Cross-examination by Mr. McClay:

Q. You have given your entire testimony while on the stand, through an interpreter?

A. Yes, sir.

Q. You are not able to speak English?

A. No, sir.

Q. What is your nationality; where were you born?

A. I am Greek. I was born in Turkey.

Q. How long have you been in this country?

A. Five and a half years.

Q. Are you a citizen of this country?

A. No, sir.

Q. You don't know what oleo oil is made of?

A. No, sir.

Q. Did you ever inquire what was in it?

A. No, sir.

Q. What different kinds of lards do you sell?

A. The pure lard.

Q. What different kinds of oils do you sell?

A. Pure olive oil and salad oil.

By Mr. Price:

Q. Do you know Dan Makress?

A. Yes.

200 Q. Is he a customer of yours?

A. Yes, sir.

By Mr. McClay:

Q. How many goods altogether have you in your store, in value; what is the value?

A. Three thousand dollars.

Q. Did it cost you three thousand dollars?

A. Yes, sir.

By the Court: I can't gather from this witness that he was selling oleo oil.

By Mr. Price: He so stated.

By the Court: When they asked him how many different kinds of oil, he stated olive oil and salad oil.

By Mr. Price: He stated that on the container was written "oleo oil."

By Mr. Price:

Q. What kind of receptacle does this oil come in?

A. It comes in fifty-pound cans.
Q. What is written on the can?
A. It has a paper on that says "oleo oil."
Q. Is it olive oil or eleo oil?

(Witness writes the words "oleo oil").

201 *Testimony of Dan Makress.*

DAN MAKRESS, a witness called on behalf of the defense, having been duly sworn and examined through the interpreter testified as follows:

Direct examination by Mr. Price:

Q. Where do you live?
A. East Pittsburgh, 713 Linton avenue.
Q. What is your business?
A. I have a restaurant, making a good business over there.
Q. Do you know Frank Synodis?
A. Yes, sir.
Q. Do you buy things from him?
A. Yes, sir.
Q. Do you buy oil from him?
A. Yes, sir.
Q. What kind of oil do you buy from him?
A. I have got the same kinds that generally sells.
Q. What is in the cans?
A. Oil.
Q. What kind of oil?
A. It is good oil.
Q. What does it look like?
A. It looks like butter, the color of it.
Q. What do you use it for?
A. For frying and cooking. It is put in the cooking pans there and frying eggs with it and stakes and anything else.

202 By the Court: He didn't say all that?
The Interpreter: Yes, sir.

(Question again put by the Interpreter.)
The Interpreter: He is cooking with it and he is frying.
By Mr. Price: You be careful to say the exact words that he uses.

Q. How much do you buy in a week?
A. It will depend on the business. I buy two pounds a day, or three, or one.
Q. What is the largest quantity you generally buy?
A. Two pounds.
Q. Do you use it for any other purpose than cooking, in the frying pan?
A. Yes, sir.
Q. How do you use it?

A. Put it right on the meat.
Q. Do you use it with bread?
A. No, sir.

Cross-examination by Mr. McClay:

Q. Do you know what is in it?
A. No, sir.
Q. You don't know a thing about it?
A. No, sir.
203 Q. Is it hard or soft?
A. Soft.
Q. Is it a liquid or solid? Is it cottonseed oil?
A. No, sir.
Q. What is it made of?
A. I don't know that.
Q. This place is East Pittsburgh, is it?
A. Yes.

Testimony of Arthur Lowenstein.

ARTHUR LOWENSTEIN, a witness called on behalf of defense, having been duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. What is your profession?
A. Chemical engineer.
Q. With whom are you employed?
A. Morris & Company.
Q. Where?
A. Chicago, Illinois.
Q. How long have you been with them?
A. About twelve years.
Q. In what capacities?
A. First as a chemist for about ten years, as chief chemist, and at the present time as technical director.
Q. Where did you study chemistry?
A. University of Cincinnati.
Q. Are you acquainted with the use of power distillate used to denature oils obtained from beef fat?
A. Since the regulation of the Bureau of Animal Industry
204 went into effect, I am familiar with it in its application to the condemned tank, what we term condemned tank, the tank in which animals condemned by the Government are rendered under seal.
Q. For what are the products from those tanks used?
A. They are used largely for the manufacture of lubricating oils and for soap manufacturing purposes.
Q. Does the power distillate in the proportion required by the Department of Agriculture, affect the value of those products?
A. I can speak only from my own knowledge in regard to lubricating oils. So far as I have been able to determine, it does not affect the value of these products for lubricating oils.

Q. Can you testify as to illuminating oils?
A. Nor for illuminating oils, such as lard oils.
Q. It does not affect the value of those oils?
A. Not so far as I have been able to observe.

Cross-examination by Mr. McClay:

Q. The condemned tanks, what do they contain?
A. The product condemned by the Government for disease.
Q. They contain nothing else, do they?
A. There might be a product condemned because the product has fallen on the floor in the general inspection; anything which they may condemn.
Q. Do you use a denaturing agent for any other purpose?
A. No.

205 *Testimony of Robt. R. Henley.*

Robert R. Henley, a witness called in behalf of the defense, having been duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. Have you made experiments in regard to the use of power distillate as a denaturing agent?
A. I have.
Q. Will you state whether or not power distillate, used as a denaturing agent of oils obtained from beef fat, is an effective agent, that is, whether it destroys the value of those oils for food purposes?

By Mr. McClay: This is objected to until the witness shows he is qualified to express an opinion.

By Mr. Price:

Q. What is your profession?
A. I am a chemist.
Q. Where did you study chemistry?
A. At Virginia Polytechnic Institute, graduated in 1906, and spent a year and a half as a post-graduate, and instructor in the laboratory.
Q. Where have you been since then?
A. With the Bureau of Animal Industry, employed as a chemist; a good part of the time spent on fats and oils.
206 Q. Have you made a special study of the subject concerning which I have just asked you?
A. Well, I have; I have been concerned with denaturing for some time.

By the Court: Do you wish to cross-examine him, Mr. McClay?
By Mr. McClay: Yes, sir.

Cross-examination (as to competency) by Mr. McClay:

Q. How long did you say you were in the Bureau of Animal Industry?

A. Since January, 1908.
Q. And you have been with them ever since?
A. Yes, sir.
Q. You have had no experience since 1908, other than in connection with that Bureau?
A. No, not except in connection with that Bureau.
Q. What was your business before that?
A. Student.
Q. And you came from college right into the Bureau of Animal Industry?
A. Yes, sir.
Q. What did they give you to do when you first went there?
A. The first thing I had to do was to examine oil and fats, determine whether they were adulterated, and also determine whether they were fit for food.

207 Q. What kind of oils and fats did you examine?
A. The oils and fats that were collected in packing houses by Government inspectors and sent in, and having the label marked "oleo oil" or "fat," as the case might be.
Q. You have examined the oil and fats to ascertain whether they were fit for food?
A. That was one of the things I did.
Q. And you were able to discover that they were fit for food, were you, by that examination?
A. I determined whether they were in my opinion edible.
Q. In your opinion?
A. Yes.
Q. And you certified that fact to your superior officers?
A. Yes, sir.

By Mr. McClay: Go on.

(Question read as before: "Will you state whether or not power distillate, used as a denaturing agent of oils obtained from beef fat, is an effective agent; that is, whether it destroys the value of those oils for food purposes?")
A. Yes, sir.

Cross-examination by Mr. McClay:

Q. Power distillate is crude oil distilled, isn't it?
A. I should judge so.
Q. What is the boiling point for distillation?

208 A. The samples that I examined of power distillate, began to boil at about 25 degrees Centigrade.
Q. What Fahrenheit would that be?
A. I haven't got that right in my mind.
Q. Well, about?
A. It would be about 400 degrees.
Q. What is the temperature that is required to drive off all traces of power distillate from the oil?
A. I have never been able to drive that off.

Q. You always can notice it in the oil?
A. In the taste of it.
Q. Can you notice it in the smell of it?
A. No, sir, I couldn't always notice it by the smell.
Q. By analysis, can't you discover it?
A. The smell of it, no, sir.
Q. You can discover its presence by analysis?
A. Never been able to do it except by taste.
Q. Why aren't you able to discover the presence of the distillation of crude oil by an examination? You can eliminate it entirely, can you—is it always present?
A. You always get the taste.
Q. It is there, the distilled crude oil is there, isn't it.
A. It is there; the power distillate is in the fat.
Q. It is present in the fat?
A. It is present in the fat.
Q. And it is not entirely eliminated, so if you make the proper chemical analysis of it you can discover its presence?
A. I can't except by taste.
209 Q. You can't do it? You are able to discover every chemical ingredient present in any matter or substance, can't you, or you ought to be?
A. I don't think I can discover every chemical ingredient in every substance.

Testimony of B. F. Black.

B. F. BLACK, a witness called on behalf of the defense, having been duly sworn, testified as follows:

Direct examination by Mr. Price:

Q. What is your occupation?
A. Meat inspector of the Bureau of Animal Industry.
Q. Located in Pittsburgh?
A. Yes, sir.
Q. Did you recently go to the grocery store of Frank Synodis?
A. I did.
Q. In East Pittsburgh?
A. Yes, sir.
Q. Did you find packages of beef fat there?
A. I did, yes, sir.
Q. State what you found.
A. I found a fifty-pound can, possibly with half the contents in it, labeled "oleo oil," with a domestic meat label on it bearing the establishment number 40.
210 Q. What does that mean?
A. Pittsburgh Provision & Packing Company, Pittsburgh.
Q. Have you examined that same product in the plant of the Pittsburgh Provision & Packing Company?
A. Yes, sir, I have.
Q. You made a physical examination of it?

A. Yes, sir.

Q. Does the Pittsburgh Provision & Packing Company make oleo oil?

A. Yes, sir, they do.

Q. Was this oil which you discovered in the Synodis place the same as that you have seen at the Pittsburgh Provision & Packing Company?

By Mr. McClay: Objected to, because he can't possibly testify it was the same.

A. I say it was similar.

No cross-examination.

By Mr. Price: Defendants offer in evidence Defendant's Exhibit "A," being the certificate dated January 15, 1915, signed "Pittsburgh Melting Company, by W. H. Womsley, Attorney," having been identified by the witness, who is the agent for the Baltimore & Ohio Railroad.

Defendants Rest.

211 REBUTTAL.

Hay Walker, Jr.—Recalled.

HAY WALKER, JR., recalled in rebuttal, testified as follows:

Direct examination by Mr. McClay:

Q. The Pittsburgh Melting Company in the manufacture of its tallow oil, does it use the fats from a particular part of the animal or from all of the fats of the animal?

A. All of the beef fat. All the fat from the carcass of the beef.

Q. And the beef fat which you procure from the retail butchers of Allegheny county, is obtained the same day as the cattle are slaughtered, is it?

A. Oh, no. Many of those cattle are slaughtered two weeks before, or three weeks.

Q. To what cattle do you refer?

A. The meat that these retail butchers sell. Those cattle may come from Chicago or Omaha, and they hang for two or three weeks or four weeks.

Q. They are cattle which are slaughtered in Government inspected houses?

A. Almost entirely—all the Western beef.

Q. But you buy also fat from retail butchers in Allegheny county that slaughter their own?

A. Yes.

212 Q. How soon after the cattle is slaughtered do you try to get those?

A. Almost always the same day.

Q. Now, the Pittsburgh Melting Company years ago was engaged in what business?

A. They were engaged in the tallow business, the oleo oil business, making some greases.

Q. Were they ever engaged in the olemargarine business?

A. They were.

Q. I want you to tell us when they were engaged in the oleomargarine business, and why they stopped and what they did with their machinery and equipment.

A. They were engaged in the oleomargarine business, commenced about 1881, and they ran for five or six years until Pennsylvania passed a prohibitory act making it a criminal offense to either make or sell oleomargarine. The Melting Company ceased, they took the case to the United States Supreme Court at that time, and the law was sustained, and they ceased to do business. All the oleomargarine then sold was brought in from the West, all the Western manufacturers. They did it in a kind of moonshine trade.

Q. What did you do with your plant and equipment?

A. We ran it on; we then made oleo or tallow oil, just the same as we are making now, and sold it. That was legal. We stopped making oleomargarine, complete and churned and put up for human use.

Q. And you used the equipment that you formerly used, for the purpose of making tallow oil?

A. We did, and are doing so today; never changed.

213 Q. And you haven't introduced this equipment for making tallow oil of late years, since 1906?

A. No.

Q. But it was the equipment that was in the plant in 1906, when the Act of Congress was passed?

A. Yes, and before that, 1890 or 1892.

Q. Some of these men have been telling about the difference between the process of manufacturing oleo oil and tallow oil?

A. Yes.

Q. What have you to say about that?

A. There isn't any difference.

Q. Is there any?

A. They are the same product, oleo oil and tallow oil.

Q. They are chemically identical?

A. Chemically identical.

Q. And this tallow oil to which these witnesses have been testifying is the oil derived from impure fats or something of that sort?

A. Something of that sort.

Q. That has an odor?

A. It has an odor. That is the only reason they would render it in that way.

Q. You and your predecessors have been in the soap business for how many years?

A. Seventy-eight years.

Q. In Western Pennsylvania?

A. Right over in Allegheny.

Q. From your knowledge of soap manufacturing would you use

a tallow oil denatured in the way these witnesses have testified, in the manufacture of toilet soaps?

214 A. I would not. I don't think anyone else would.

Q. You endeavor to manufacture as pure tallow oil as you can?

A. We make just as good as we know how, out of the material we get. We apply that same rule to all our manufacture. I think everybody else does.

Q. Did you ever hear of this denaturing process until yesterday?

A. I did not.

Q. What other process had you heard of?

A. We got some condemned stock from Dunlevy, which had something on it. They said it was carbolic acid.

Q. Was the odor perceptible?

A. Yes, it smelled like carbolic acid. You could smell it on the rendered grease.

Q. Were you able to sell that?

A. We used it in a lower grade of soap. In making toilet soap it is just like making oleomargarine; you want to get the material as near odorless as possible, in order to get perfume, the proper perfume in it and get the full benefit of it, and if you put something in that to give it an unpleasant odor, it spoils the perfume when you go to perfume it; in addition to that, whatever amount of oil is in there don't saponify; in other words, it is unsaponifiable, and it is just that much grease in the soap; and it is the universal custom to limit that to three per cent. All grease has a little in it, or almost all the lower grade of grease has some in it. I have a bill in my pocket from Armour & Company for a lot that had six per cent in it, that they sent us and we rejected. I have the voucher here in my pocket, if you want to see it—that they had put too much power distillate in that consignment.

215 Q. Is there a difference in the price between oleo oil and tallow oil?

A. Yes, the oleo oil is higher than than the tallow oil.

Q. What price do you obtain, oleo or tallow oil prices?

A. We obtain tallow oil prices.

Q. What ordinarily is the average difference in price between the two?

A. One to two cents a pound.

Cross-examination by Mr. Price:

Q. You say you have never seen products which have been denatured by the use of power distillate?

A. I have seen many products that have been adulterated by petroleum products, and I understand this is just the same.

Q. You are not acquainted with the power distillate as a denaturent?

A. No, I never saw what you call power distillate. You tell me it is a heavier oil than petroleum; I am acquainted with that. It is just a new name, as far as I understand.

Q. Do you know anything more about it than you have learned during the course of this case, the trial of this case?

A. No, except when you said it is a product of petroleum; I know about that.

Q. You are not actively in charge of the work of the Pittsburgh Melting Company, are you?

A. Yes, I am.

Q. Do you buy the fats?

A. Well, I regulate the price. I don't collect them. I
216 am the active head of the company, if that is what you want.

Q. Do you yourself examine the fats?

A. No. I have done so.

Q. But not lately?

A. Well, every once in a while.

Q. Do you use all of the product from any particular kettle in your works?

A. What do you mean?

Q. Isn't there a part of the finished product which cannot be used?

A. Not that I know of. We use everything.

Q. You can't use the entire contents of one of these open kettles in the Pittsburgh Melting Company, can you?

A. Oh, yes, everything is used, even the water that it is boiled in.

Q. What do you do with the part that isn't clear?

A. You mean the sludge that settles out of the fat?

Q. Yes.

A. We put that into our lower grade tallow kettles, and render it there.

Q. So you have different grades of tallow?

A. Yes. I testified so yesterday.

Q. I thought you said you only had one grade of it.

A. Oh, no.

Q. Do you use all of the fat that comes into the Pittsburgh Melting Company's plant?

A. Do we use it all?

Q. Yes.

A. We manufacture it all.

217 Q. You don't reject any?

A. If it is spoiled, we put it in a lower grade. We reject it if it is spoiled. We pay a different price for different qualities collected, if that is what you mean.

Q. With that inferior quality of fat you make a lower grade of tallow oil?

A. A lower grade of tallow. We don't do it the way these Western gentlemen described it, though, in a closed tank. We don't make ours that way.

W. H. Womsley—Recalled.

W. H. WOMSLEY, recalled in rebuttal, testified as follows:

Redirect examination by Mr. McClay:

Q. Is there any difference between the prices of oleo oil and tallow oil?

A. Yes, sir.

Q. What is the average price—You have the quotations lying there on the table before you?

A. Yes, sir.

Q. By whom were those quotations furnished?

A. Chicago Daily Hide and Tallow Bulletin.

Q. What is the date?

A. June 30, 1915.

Q. Take June 30, 1915—what was the price of first-class oleo oil?

A. It ranged from ten to ten and a half.

218 Q. What was the price of the second class oleo oil?

A. Neither one of these sheets have the second grade on. It runs from one and a half to two cents a pound less.

Q. Ten and a half cents a pound?

A. Yes, sir.

Q. The second grade would be from eight to nine cents?

A. Yes, sir.

Q. And the third grade how much less?

A. Probably a cent less.

Q. And what is the tallow oil price?

A. The last sale we made was seven cents, delivered Chicago.

Q. That included the freight?

A. Yes, sir. We figured one-fourth off.

Q. What would that net you in Pittsburgh?

A. Six and three-quarters cents.

Q. How much did you sell to Chicago?

A. 432 barrels.

Q. The prices which you obtained were tallow oil prices?

A. So far as I know.

Q. Who makes the prices?

A. This is the Jacobson Publishing Company.

Q. How do you know at what price to sell?

A. We are governed largely by the trade sheets that come to our office daily.

Q. You sell on the basis of tallow oil prices?

A. Yes, sir.

219 Cross-examination by Mr. Humes:

Q. At what price do you sell the product in Rotterdam?

A. The best obtainable price.

Q. What price do you get for it there? You testified to the price in Chicago and the price in Pittsburgh. Now, what do you sell your product to Rotterdam for?

By Mr. McClay: Ask him what price they obtained for specific shipments.

By Mr. Humes:

Q. The last you sent?

A. My recollection is eight and a quarter cents. The price was higher there, naturally, because they have to pay ocean freight and all insurance rates, that are charged against the shipment.

Q. What did you get for your shipment of January 15th?

A. I don't recall.

Q. Can you tell from your books?

A. Yes, sir.

Q. Will you tell us what the price is from the books, then?

A. Nine cents.

Q. Was that nine cents here?

A. Yes, sir.

Q. In Pittsburgh?

A. Yes, sir.

Q. You say you made a shipment of tallow oil for Chicago, for which you got seven cents. When was that shipment?

220 A. The shipment, I believe, has not all been completed but during the past week.

Q. And the difference between the nine and the eight cents on your Rotterdam price from January to now, you say is due to increased freight rates and to increased insurance?

By Mr. McClay: He didn't say anything of the kind.

By Mr. Humes: I understood him to say the price was down on account of the war risks.

By Mr. Humes:

Q. Didn't I understand you correctly?

A. Conditions have made exporting all these materials impossible.

Q. Now, about January 15th, what was the price for which you sold your product or could sell your product in this country?

A. I don't know. The quotation that I would be governed by is in the hands of our attorney, and it says 13¼ cents. We sold ours at 9 cents.

Q. That is, 9 cents in Rotterdam. Where was the 13½ cent price?

A. Here, Chicago.

Q. Was that for tallow oil or oleo oil?

A. Oleo oil.

Q. Do you sell this to Rotterdam—You sold this in Rotterdam as oleo oil, did you?

A. No, sir, as tallow oil.

Q. You don't remember of any particular sales that you made in this country about that time?

A. I do not.

Recess.

221 Afternoon Session.

SUR-REBUTTAL.

G. G. Fox—Recalled.

G. G. Fox, recalled in sur-rebuutal, testified as follows:

Direct examination by Mr. Humes:

Q. Are you, in connection with your employment and your business of manufacturing tallow and the marketing of the product, familiar with the various markets of the world for that product?

A. I am.

Q. You may state as to whether or not Holland is a market for that product.

By Mr. McClay: Objected to as not sur-rebuttal.

Objection sustained.

By the Court: They have already testified that Holland is one of the principal markets of the world for grease.

By Mr. Humes: I want to show that it is a market for oleo oil, and not for tallow or tallow products.

222 By the Court: Wasn't that part of your case in chief?

By Mr. Humes: No, sir, I think not. They have gone into the matter in rebuttal to undertake to show by the sale price of this product in Holland, that the price at which this product was sold to Holland was the tallow price and not the oleo oil price.

By the Court: It was brought out on cross-examination.

By Mr. Humes: They produced the list, the quotations.

By Mr. McClay: In this country.

By Mr. Humes: If in cross-examination it was brought out, it was a proper subject of cross-examination in connection with his other testimony. We certainly have a right in sur-rebuttal to answer that line of examination and that line of proof.

By Mr. McClay: We asked him solely about the difference in the price between oleo oil and tallow in the United States. Counsel for the Government cross-examined him on the price in Holland. Now, we didn't object to that; we let it go in without objection. It is entirely improper to ask the witness any question other than to

223 rebut the testimony that we produced, and what he is attempting to do is to ask this witness whether there is a market for oleo oil in Holland and no market for tallow oil, and that is for the purpose of satisfying the Court that under the guise of shipments of tallow oil, we are selling oleo oil, to go into the manufacture of oleomargarine in Holland, and that was part of their case in chief.

By Mr. Humes: This is all for the Court.

By the Court: State your offer.

By Mr. Humes: The Government offers to prove by the witness on the stand that there is no market for tallow or tallow oil for industrial purposes in Holland, but that oils and greases for industrial

purposes in those countries are supplied from the whale and fish oil and other local products, that make it impossible for tallows and tallow oils from this country to compete for industrial purposes in Holland, and that the only Holland market for any of the American products of this nature are for oleo oil for the manufacture of oleomargarine and butterine.

By the Court: Before ruling, I will offer the plaintiff the opportunity of cross-examining the witness as to his means of
224 knowledge as to the matter proposed to be proved under this offer, if counsel for plaintiff desire.

By Mr. McClay:

Q. Where do you live?
A. In Chicago.
Q. What is your business?
A. With Armour & Company, in the refining department.
Q. What part of the business do you look after?
A. I look after the supervision of the lard and oil refineries, and I am associated with the sales department, having knowledge of all shipments from that department.
Q. From Armour & Company?
A. Yes, sir.
Q. How long have you been with them?
A. Fourteen years.
Q. Have you been with any other establishment during that time?
A. No, sir.
Q. Your knowledge, therefore, is exclusively what you have gathered in connection with the ordinary business of Armour & Company?
A. A knowledge of the tallows that are shipped by Armour & Company, and gathered from experience.
Q. Have you been in Holland.
A. I have.
Q. When?
A. In 1912.
Q. When were you there prior to that time?
A. Never there before that time.
225 Q. Ever since that
A. Never since that time.
Q. You were never there but the once?
A. Just once.
Q. How long were you there on that occasion?
A. About two or three weeks in Holland.
Q. Two or three weeks?
A. Yes.
Q. Were you on a pleasure trip?
A. No, sir, business.
Q. For the purpose of selling the product of Armour & Company, was it?
A. For the purpose of information.

By Mr. McClay: I object to the offer first, because it is properly the examination in chief, and secondly, it is not sur-rebuttal to any testimony offered by the plaintiff in rebuttal, and third, the witness on the stand cannot testify of his own knowledge to anything other than what he acquired during two weeks' stay in Holland in 1912, and he is not competent.

Objection sustained.

Exception noted for defendants.

Defendants rest.

Testimony closed.

226 *Opinion.*

Filed January 17, 1916.

ORR, *J.*:

This suit in equity is before the court for decision after trial. The controversy involves a construction of that portion of the Act of Congress entitled, "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30th, 1907," approved June 30th, 1906 (34 Stat. at Large, 674), which is commonly known as the Meat Inspection Amendment. Particularly it involves the question whether the plaintiff and the plaintiff's products are within the provisions of that Act, and the question whether or not the Secretary of Agriculture has not exceeded his power in the adoption of certain new regulations intended to become effective on November 1, 1914. The immediate reason for filing the bill, as appears in the testimony, was the refusal by the Baltimore & Ohio Railroad Company to accept a shipment of tallow oil, because of notice to it by the defendant, G. E. Totten, who was an inspector of the Bureau of Animal Industry of the Department of Agriculture, that the shipment offered by the plaintiff was not accompanied by a certificate in the form required by the regulations of November 1, 1914. This brief statement of the case was supported by the evidence at the trial from which are found the following facts:

The plaintiff is a corporation of Pennsylvania and owns and operates a plant for the manufacture of tallow oil (sometimes known as "oleo oil"), stearine, tallow, cracklings, stock and grease
227 in the City of Pittsburgh. It and its predecessors have been in business for more than 78 years. Its plant is connected by means of a railroad siding with the railroad of the defendant Railroad Company. The defendant Railroad Company is a corporation of the State of Maryland and is a common carrier operating a line of railroad from various points including, among others, from Pittsburg to New York.

The plaintiff in 1881, or thereabouts, began the manufacture of oleomargarine and continued in that business for five or six years, until the legislature of Pennsylvania passed an act forbidding the manufacture of that substance. Plaintiff then ceased such manufacture, and thereafter operated its plant for the sole production

of tallow or oleo oil, stearine, grease, tallow, cracklings and stock, until the present time, using the machinery and equipment which had formerly been used by it in the manufacture of oleomargarine. Plaintiff woes not sell or ship tallow or oleo oil, or any of its product, to any manufacturer or dealer in oleomargarine. It sells its product to manufacturers of soap, railroad companies, oil companies, steel companies and others. Among its customers are Fairbanks & Company, W. & H. Walker, Colgate & Co., Swift & Co., The Westinghouse Air Brake Company and various railroad companies. It ships a very large portion of its oil to Holland, Sweden and other foreign countries.

Tallow or oleo oil is used not only for making soap, but for the production of glycerine, dynamite, and for other industrial and commercial purposes, including the manufacture of oleomargarine.

It is the product of the fat of slaughtered beef cattle. The fat from which the plaintiff manufactures its oil is collected
228 by its wagons, which visit various establishments in Allegheny County in the State of Pennsylvania, where beef cattle are slaughtered, or slaughtered animals are sold for meat. In the selection of these fats the plaintiff uses care and endeavors to select the best and purest. It uses the fat from all parts of the animal and not the fat from particular parts only of the animal.

Oleo oil which is intended to be used and is used in the manufacture of oleomargarine, is taken from particular parts of the carcass of the animal. Plaintiff's oil is not denatured. In plants which are inspected by inspectors appointed by the Department of Agriculture, the process of denaturing is applied only to fats from condemned carcasses or fats which have fallen upon the floor, or perhaps have received some similar treatment. It is not practicable to denature tallow oil without impairing in some degree its value. While the evidence disclosed that its value for lubricating or illuminating purposes would not be affected, and perhaps for some of the coarser products of industrial operations, yet the court is satisfied that denaturing would affect the value of the oil for some of the purposes for which it is used, as in the manufacture of the finer soaps, tooth powders and other pharmaceutical preparations. Neither oleo oil or tallow oil is sold by wholesale or retail grocers as a common article of food. While the evidence discloses the fact that some people have eaten both at times yet the fair conclusion from the testimony is that neither is a food. There was no evidence that any person had ever eaten any of plaintiff's product.

Plaintiff's oil is sold in the market as tallow oil. It is not sold in the market as oleo oil at prices for which oleo oil sells.
229 The prices for oleo oil are higher than the prices of tallow oil. The oil which plaintiff ships in interstate and foreign commerce is shipped in tierces, upon which, in addition to other markings, there are conspicuously placed the words "Tallow Oil" and "Inedible." There was no evidence in the case that plaintiff by correspondence or otherwise had at any time led anyone to believe that the oil shipped by it was edible. Nor was there any evi-

dence in the case that the plaintiff by subterfuge had at any time intended or attempted to evade the provisions of the law.

On or shortly after October 1, 1906, at which time the Act of Congress now under consideration went into effect, the Department of Agriculture established at the plant of the plaintiff a system of inspection, whereby the entire operation of the plant was under the direction of an inspector assigned by the Bureau of Animal Industry, and thereafter for several years no operations were carried on at the plant of the plaintiff except under the direct supervision of such inspector or inspectors. The mode of inspection during that period was as follows: The fat, after it was collected by wagons from various establishments in said county and delivered to plaintiff's plant, was inspected by the inspector by looking at it and smelling it. During the process of manufacturing the oil, the inspector made observations as to the temperature maintained in boiling the fat. When the oil was ready for shipment the inspector further inspected it by tasting and smelling it. In addition to the inspection of the product itself, the inspector maintained a general supervision over the condition of the plant. Although plaintiff was advised that its plant was not subject to the provisions of the Act of Con-
230 gress, known as the Meat Inspection Amendment, it submitted to the same because the mode of inspection was deemed to be reasonable.

On or about May 10, 1907, the plaintiff was informed by the Bureau of Animal Industry that the Department of Agriculture had adopted a regulation whereby the mode of inspection theretofore maintained at plaintiff's plant would be discontinued, and whereby the plaintiff would not be permitted to use in the manufacture of tallow oil fat obtained from animals slaughtered at other than official establishments as determined by the regulations of the Department, such establishments being those at which official inspection under the Act of Congress was maintained. The mode of inspection adopted by said Bureau, pursuant to said regulations, was as follows: The driver of each wagon delivering fat to plaintiff's plant was required to obtain from each person from whom he obtained such fat, and to deliver to the Bureau's inspector, a certificate stating that the fat was from the carcasses of beef cattle, which had been slaughtered at one of said official establishments. After the receipt of such information, the plaintiff declined to accede to the requirements of such new regulations and thereupon the Government withdrew its inspection from plaintiff's plant.

After the withdrawal of the inspection, the plaintiff shipped its product as "inedible" only, and so marked it in accordance with the rules and regulations adopted by the Secretary of Agriculture, which became effective April 1, 1908, and continued to ship its product until July, 1910, when an inspector notified the Baltimore & Ohio Railroad Company not to carry a certain shipment to one of plaintiff's customers in Rotterdam, Holland. Plaintiff
231 then filed its bill in equity in this court against said Railroad Company and G. E. Totten, the Government Inspector, to restrain the enforcement of such notice, and to permit such ship-

men to go forward which proceedings were subsequently discontinued by reason of the disposition of the indictment hereinafter mentioned.

At or about the same time that the bill in equity was filed, the said Government Inspector caused an information to be made against the plaintiff and its General Manager, upon which an indictment was obtained, charging them with unlawfully offering to said Railroad Company a meat food product for transportation from Pittsburgh and thence to Rotterdam. In that case a verdict was rendered for the defendants.

From that time until January 15, 1915, the plaintiff, without complaint or objection on the part of the defendant Totten, or the said Bureau of Animal Industry, continued to make shipments of oil in interstate and foreign commerce, as an inedible fat, labeling each tierce containing the same with the word "Inedible," and delivering to the carrier certificates in the following form, namely:

"(Date)....., 190..

Name of common carrier.....
Consignor .....
Point of shipment .....
Consignee .....
Destination .....

I hereby certify that the following described fat is inedible and is not intended for food purposes, and that the said fat is of
232 such a character or is intended for such a use that denaturing is impossible or will render said fat unavailable for the desired industrial use.

Kind of product	Amount of weight.
.....	.....
.....	.....

.....
(Signature of Shipper.)

.....
(Business occupation of Shipper.)

.....
(Address of Shipper.)"

On January 15, 1915, the plaintiff delivered to the defendant Railroad Company a certain car loaded with 100 tierces of said oil for shipment over the railway of said company to New York in the State of New York, and thence by steamer sailing from the Port of New York on January 28, 1915, to Rotterdam, Holland. The end of each of said tierces was painted white and there was conspicuously stenciled or burned thereon "Tallow Oil," the true name of the product contained therein, and also the word "Inedible."

On January 20th, 1915, the plaintiff executed and delivered to said Railroad Company the following certificate:

233 "Jan. 15th, 1915.

Inedible Fat.

Name of common carrier, Baltimore & Ohio Railroad Co.
Consignor, Pittsburgh Melting Co.
Point of shipment, Pittsburgh, Pa.
Consignee, Daniel Loeb.
Destination, Rotterdam, Holland.

I hereby certify that the following described fat is inedible and is not intended for food purposes, and that the said fat is of such a character or is intended for such a use that denaturing is impossible or will render said fat unavailable for the desired industrial use.

Kind of product.	Amount and weight.
Tallow.	Bbls. Lbs. Gross.
100 tcs. Tallow Oil.	44,300 lbs. Gross

Name of shipper,

PITTSBURGH MELTING COMPANY."

The consignee named in the certificate last mentioned is a dealer in oils and grease. The defendant Totten notified the defendant Company not to transport the shipment of oil described in said certificate. The defendant company immediately notified the plaintiff of the notice served on it by the defendant Totten. Thereupon the bill in this case was filed and a preliminary injunction was issued against the defendants.

234 In view of the facts thus found are the plaintiff and its products within the provisions of the Act of Congress? The Act declares that its purpose is to prevent "the use, in inter-State or foreign commerce as hereinafter provided, of meat and meat food products which are unsound, unhealthful, unwholesome or otherwise unfit for human food." It directs the Secretary of Agriculture to cause to be made by inspectors, appointed for that purpose, as thereinafter provided, "an examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine and goats to be prepared for human consumption at any slaughtering, meat-canning, salting, packing, rendering or similar establishment in any State, Territory, or the District of Columbia, for transportation or sale as articles of interstate or foreign commerce." It provides that "the carcasses and parts thereof of all such animals found to be sound, healthful, wholesome, and fit for human food, shall be marked, stamped, tagged or labeled as 'Inspected and Passed,'" and that "all carcasses and parts thereof of animals found to be unsound, unhealthful, unwholesome, or otherwise unfit for human food," shall be marked, stamped, tagged or labeled as "Inspected and Condemned."

It authorizes the inspectors to re-inspect carcasses or parts thereof to determine whether, since the first inspection, same had become unsound, unhealthful, unwholesome or in any way unfit for human food, and if upon such examination the carcasses or parts thereof should be found to be unsound, unhealthful, unwholesome or otherwise unfit for human food, they are to be destroyed for food purposes by the said establishment, in the presence of the inspector.

235 The Act further provides, "That for the purposes hereinbefore set forth, the Secretary of Agriculture shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all meat food products prepared for interstate or foreign commerce in any slaughtering, meat- canning, salting, packing, rendering or similar establishment," and gives them full access to the establishment at all times, by day or night.

The Act excludes from its provisions animals slaughtered by any farmer on the farm, and sold or transported as interstate or foreign commerce, and retail butchers and retail dealers in meat and meat food products supplying their customers, with the proviso that the Secretary of Agriculture is authorized to maintain the inspection provided for in the Act at any slaughtering, meat-canning, salting, packing, rendering or similar establishment, notwithstanding such inspection and that the persons operating the same may be retail butchers, and retail dealers or farmers and where the Secretary of Agriculture shall establish such inspection, then the provisions of the Act shall apply, notwithstanding such exception. The Act contains highly penal provisions for the punishment of those who violate the same by fine or imprisonment or both.

The clear purpose of the Act is to prohibit selling and offering for transportation, in interstate or foreign commerce, all meat food products which are unsound, or unfit for human food. To express it more briefly, the intent of the Act is to prevent the sale of unwholesome food. It relates solely to establishments which are engaged in the preparation of meat and meat food products for interstate or foreign commerce. It cannot be pretended that there

236 is any express provision in relation to establishments which do not pretend to manufacture or prepare meat or meat food products for interstate or foreign commerce.

It is urged, however, upon the part of the Government that because the tallow oil of the plaintiff cannot be distinguished from the Oleo Oil manufactured by the establishment to which the Act plainly applies, and because it might be used by some as a food, that therefore it is a meat food product within the meaning of the Act.

If we accept as common knowledge historical facts and accept also the correctness of the position of the Government on this point, then the tallow candles which have been relished by Arctic explorers and their associates and the salted hides which were so carefully apportioned and distributed to the defenders at the siege of Londonderry were meat food products. In a civilized community, nothing can so destroy the desire for a manufactured product as an article of food as to have the same marked conspicuously "Inedible."

The manufacturer of oleomargarine would not receive into his

establishment tierces of oil so marked, except under cover of night. The mere fact, however, that someone might use the product of the plaintiff contrary to plaintiff's intention, and in fraud and deception of the public, ought not of itself to be a cause for subjecting the plaintiff to the highly penal provision of the Act without express words and merely by implication. If, however, the conclusion be not correctly found from the provisions of the Act itself and if the Act be a doubtful expression of the intent of Congress with respect to such establishment as the plaintiff's, aid in the true construction of the Act may be found in the construction placed upon it
237 for many years by those charged with executing its provisions.

Authority for this is found in Fairbanks vs. The United States, 181 U. S., 283-308. Mr. Justice Brewer said:

"An examination of the opinions * * * will disclose that they may be graded in three classes:

First. Those in which the court, after seeking to demonstrate the validity or the true construction of the statute, has added that, if there were doubt in reference thereto the practical construction placed by Congress or the Department charged with the execution of the statute was sufficient to remove the doubt:

Second. Those in which the Court had either stated or assumed that the question is doubtful and has rested its determination upon the fact of a long-continued construction by officials charged with the execution of the statute; and

Third. Those in which the Court, noticing the fact of a long-continued construction, had distinctly affirmed that such construction cannot control where there is no doubt as to the true meaning of the statute.

From this résumé of our decisions it clearly appears that the practical construction is relied upon only in cases of doubt. We have referred to it when the construction seemed to be demonstratable, but then only in response to doubts suggested by counsel. Where there was obviously a matter of doubt, we have yielded assent to the construction placed by those having actual charge of the construction of the statute, but where there was no doubt we
238 have steadfastly declined to recognize any force in practical construction. Thus, before any appeal can be made to practical construction, it must appear that the true meaning is doubtful."

By the Act Congress authorized the Secretary of Agriculture to make from time to time such rules and regulations as are necessary for the efficient execution of the provisions thereof.

The Secretary of Agriculture adopted regulations covering meat inspection which became effective April 1, 1908, and Section 8, page 7, of these regulations reads as follows:

"Sec. 8. Meat Food Products. Par. 1. A meat food product, within the meaning of the Meat Inspection Act and of these regulations, is considered to be any article of food intended for human use, which is derived or prepared, in whole or in part, from any edible portion of the carcasses of cattle, sheep, swine or goats, if the said edible portion so used is a considerable and definite portion of the finished food."

Over six years afterwards, the Secretary of Agriculture adopted certain other regulations which became effective November 1, 1914. Regulation 1:

"Par. 21. Meat Food Product: Any article of food, or any article which enters into the composition of food for human consumption, which is derived or prepared, in whole or in part, from any portion of the carcass of any cattle, sheep, swine or goat, if such portion is all or a considerable and definite portion of the article, except such articles as organo-therapeutic substances, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession."

"Par. 22. Meat and Products: Carcasses, parts of carcasses, meat, products, food products, meat products, and meat food products of, or derived from, cattle, sheep, swine and goats, which are capable of being used as food by man."

It will be noticed specially that the word "capable" has been inserted in the definition last adopted. There is, in the latter definition, an attempt by the Secretary of Agriculture to define what shall constitute a meat or meat food product. The power given him to make rules and regulations or the efficient execution of the provisions of the Act, does not give him power to add any provision to the Act or to remove any part therefrom. It does not authorize him to say what is or what is not a meat food product because the meaning of the words as found in the Act is clear. The meat and meat food products which the Act requires to be inspected must be such as are articles eaten by man, "proper for human consumption and fit for human food." That Congress cannot delegate legislative power to any executive officer is clear under all the authorities: Field vs. Clark, 143 U. S., 649, and Morrill vs. Jones, 106 U. S., 466.

In United States vs. Eaton, 144 U. S., 677-687, Mr. Justice Blatchford, delivering the opinion of the Court, used this language:

"Much more does this principle apply to a case where it is sought substantially to prescribe a criminal offense by the regulation of a department. It is a principle of criminal law that an offense which may be the subject of criminal procedure is an act committed or omitted 'in violation of a public law, either forbidding or commanding it:' 4th Am. & Eng. Enc. Law, 642; 4 Bl. Com., 5. It would be a very dangerous principle to hold that a thing prescribed by the Commissioner of Internal Revenue, as a needful regulation under the Oleomargarine Act, for carrying it into effect, could be considered as a thing 'required by law' in the carrying on or conducting of the business of a wholesale dealer in oleomargarine, in such a manner as to become a criminal offense punishable under Section 18 of the Act; particularly when the same Act, in Sec. 5, requires a manufacturer of the article to keep such books and render such returns as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulation, require, and does not impose, in that section or elsewhere in the Act, the duty of keeping such books and rendering such returns upon a wholesale dealer in the article."

In all those cases as well as in others which could be cited the distinction is carefully preserved between the power of an executive officer to make rules and regulations for the enforcement of an act which authorizes the same, and the power to add to or take away from the act itself.

Among the regulations adopted by the Secretary of Agriculture, and intended to take effect November 1, 1914, was the requirement of a certificate by the shipper that he should sign a certificate
241 found in Regulation 25, Sec. 12, of which the following is the form:

"Date.....191..

Inedible Fat.

Name of carrier.....
Consignor .....
Point of shipment.....
Consignee .....
Destination ......"

I hereby certify that the following described fat is not capable of being used as food by man, is suitable only for industrial purposes, is not for food purposes, and is of such a character or for such a use that denaturing is impracticable. I further certify that there is now on file with the Secretary of Agriculture a declaration by the establishment in which said fat was prepared or from which it is offered for shipment, in compliance with Section 6 of Regulation 4 of the regulations of the Secretary of Agriculture governing meat inspection.

Kind of Product.	Amount and weight.
.....	.....
.....	.....

.....
(Signature of Shipper.)

.....
(Business Occupation of Shipper.)

.....
(Address of Shipper.)"

242 By that certificate the shipper is required to say that his inedible food is not capable of being used as food by man. "Capable" is the word that is specially objectionable in the definition as well as in the certificate described in the later regulations. It requires the plaintiff to certify to what is not true. His product is capable of being used as food by man just as the tallow candles and the salt hides were capable of being so used. Even the denatured product of the establishments which are subject to the inspection

provided by said Act are capable of being used as food by man, although they have been treated, or as it is called denatured, by the addition of a substance derived from petroleum, "Power Distillate."

So far as the evidence goes in this case, Power Distillate affects the taste as well as the value of the product of which it is a part. However, Tallow Oil so treated can perhaps support life as well as the product of the plaintiff, and is as capable of being used as food by man, as the product of the plaintiff, although, perhaps, with less gratification to the consumer. It seems therefore that the Secretary of Agriculture has exceeded his authority by the regulations intended to become effective on November 1, 1914, in that such regulations tend to broaden the scope of the Act of Congress.

It follows therefore that the Act of the defendant Totten, notifying the defendant company not to transport the shipment of oil described in the certificate tendered to it, was not justified, and that the particular shipment of oil which was the immediate cause of the filing of the plaintiff's bill, and other shipments of a like character when marked in the same way and when accompanied by
243 similar certificates should be received and carried by the carrier.

A decree may be presented in conformity with the prayers of the bill.

Decree, Notice and Acceptance of Service.

Filed January 22, 1916.

Decree.

And now, to wit, January 22, 1916, this cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

First. That the defendant, the Baltimore & Ohio Railroad Company, be, and it is hereby ordered, directed and decreed to receive from the plaintiff, the Pittsburgh Melting Company, for transportation in interstate and foreign commerce, any and all oleo or tallow oil, manufactured by the plaintiff and tendered to the said defendant railroad company for such transportation, so long as the containers, in which the said oleo or tallow oil is offered for shipment, are stenciled or labeled with the word, "Inedible," and so long as the Pittsburgh Melting Company shall make and deliver to the said Baltimore & Ohio Railroad Company, with each shipment, a certificate certifying, in substance, that the oleo or tallow oil tendered for ship-
244 ment in interstate or foreign commerce is inedible, and is not intended for food purposes, and that the said oil is of such a character, or is intended for such a use that denaturing is impossible or will render the oil unavailable for the desired industrial use.

Second. That the defendant, G. E. Totten, as inspector of the Bureau of Animal Industry of the Department of Agriculture, at Pittsburgh, Pennsylvania, and his successors in office, and his and their assistant inspectors and other employes, be and they are hereby

enjoined from in any way interfering with the Pittsburgh Melting Company, the Baltimore & Ohio Railroad Company, or any other railroad company, in tendering, receiving and transporting or delivering any oleo or tallow oil, manufactured by the Pittsburgh Melting Company and tendered by it to any of the said railroad companies for interstate or foreign shipment, so long as the containers, in which the said oleo or tallow oil is tendered for shipment, are stenciled or labeled with the word "Inedible," and so long as the Pittsburgh Melting Company shall make and deliver to the Baltimore & Ohio Railroad Company with each shipment a certificate certifying, in substance, that the oleo or tallow oil tendered for shipment in interstate or foreign commerce is inedible, and is not intended for food purposes, and that the said oil is of such a character, or is intended for such a use, that denaturing is impossible or will render the oil unavailable for the desired industrial use.

Third. That the defendants pay the costs.

PER CURIAM.

245 *Notice.*

To E. Lowry Humes, Esq., Benjamin M. Price, Esq., Solicitors for G. E. Totten, Inspector of the Bureau of Animal Industry of the Department of Agriculture, Messrs. Gordon & Smith, Solicitors for Baltimore & Ohio Railroad Company:

You are notified that on January 22, 1916, at 10:00 o'clock A. M., or as soon thereafter as the attention of the Court may be had, the plaintiff will move the Court to enter a final decree in the above entitled cause, in accordance with the foregoing draft.

REED, SMITH, SHAW & BEAL,
Solicitors for Pittsburgh Melting Company.

And now, to wit, January 21st, 1916, service of the foregoing notice accepted.

GORDON & SMITH,
Solicitors for Baltimore & Ohio Railroad Company.
E. LOWRY HUMES,
United States Attorney, Solicitor for G. E. Totten, Inspector of the Bureau of Animal Industry of the Department of Agriculture.

246 *Petition for Appeal.*

Filed February 5, 1916.

To the Honorable Charles P. Orr, Judge of the United States District Court for the Western District of Pennsylvania:

The petition of G. E. Totten, Inspector of the Bureau of Animal Industry of the Department of Agriculture, defendant, by his attorney, E. Lowry Humes, United States Attorney for the Western District of Pennsylvania, respectfully represents:

That your petitioner, deeming himself aggrieved by the decree entered in the above cause on January 22, 1916, does hereby appeal from the said decree to the United States Circuit Court of Appeals for the Third Circuit, and prays that this, his appeal, be allowed and that a transcript of the record, proceedings and papers in such cause, duly authenticated, may be sent to the said Circuit Court of Appeals, as the law in such case provides.

E. LOWRY HUMES,
United States Attorney and Solicitor
for G. E. Totten, Defendant.

Order of Court.

And now, February 5, 1916, an appeal is allowed as prayed for.

CHAS. P. ORR,
U. S. District Judge.

247 *Assignments of Error.*

And now, February 5th, 1916, comes the defendant, G. E. Totten, Inspector of the Bureau of Animal Industry of the Department of Agriculture, and says that in the record and proceedings of the said Court in the above entitled case, and in the final decree made and entered therein on the 22d day of January, 1916, there is manifest error, and for error the said defendant assigns the following:

First. The Court erred in not holding that plaintiff's oil product is a meat food product and therefore subject to the Meat Inspection Act.

Second. The Court erred in not holding that plaintiff's oil was oleo oil of No. 2 grade, although plaintiff called its product tallow oil.

Third. The Court erred in not holding that oleo oil such as the oil manufactured by the plaintiff is largely used as a component of oleomargarine, forming from 20 per cent. to 80 per cent. of the finished product, the average being from 55 per cent. to 60 per cent.

Fourth. The Court erred in not holding that said oleo oil is used as shortening by bakers and is also used for frying and cooking purposes, and is even used by some as a food in its natural state.

248 Fifth. The Court erred in not holding that said oleo oil is edible and enters into the composition of food for human consumption.

Sixth. The Court erred in not holding that it is practicable to denature plaintiff's oil product without destroying its value for industrial uses.

Seventh. The Court erred in not holding that the only sure and practicable method of insuring the purity and wholesomeness of said oleo oil, and of protecting the public from disease transmissible from diseased cattle to man through the use of oleo oil or oleomar-

garine as a food product, is by ante-mortem and post-mortem examination of the cattle at the time of slaughter.

Eighth. The Court erred in not holding that the shipment and transportation of plaintiff's oleo oil in interstate or foreign commerce was a violation of the Meat Inspection Act.

Ninth. The Court erred in not holding that the Regulations of the Secretary of Agriculture promulgated July 15, 1914, effective November 1, 1914, known as B. A. I. Order 211, are reasonable and within the scope of the Meat Inspection Act, and have the force of law.

Tenth. The Court erred in overruling defendant's offer of evidence, which offer with the objection and the ruling of the Court thereon was as follows:

249 Dr. Mohler, Assistant Chief of the Bureau of Animal Industry of the Department of Agriculture, called as a witness by the defendant, was asked:

"Q. Is oleo oil regarded by the Bureau of Animal Industry as a meat food product?

By Mr. McClay: Objected to as incompetent and irrelevant.

Objection sustained.

By the Court: That is the same question over and over again that we have had, and the same ruling.

By Mr. Price: Will your Honor grant me an exception?

Exception noted for defendant.

By Mr. Price: To preserve the record, if your Honor please, we offer to prove by other witnesses that oleo oil is regarded in the administration of the Meat Inspection Act by the Bureau of Animal Industry and the Secretary of Agriculture, as a meat food product, and has been so regarded since the Meat Inspection Act went into effect.

By Mr. McClay: Objected to as incompetent and irrelevant, and not the proper subject of an opinion or expression of opinion

250 by the Bureau of Animal Industry, but must be determined by the Court from a reading of the Act of Congress and the testimony.

Objection sustained.

Exception noted for defendant."

Eleventh. The Court erred in overruling defendant's offer of evidence, which offer with the objection and the ruling of the Court thereon was as follows:

G. G. Fox, recalled by defendant in sur-rebuttal, was asked:

"Q. Are you, in connection with your employment and your business of manufacturing tallow and the marketing of the product, familiar with the various markets of the world for that product?

A. I am.

Q. You may state as to whether or not Holland is a market for that product?

By Mr. McClay: Objected to as not sur-rebuttal.

By Mr. Humes: The Government offers to prove by the witness on the stand, that there is no market for tallow or tallow oil for industrial purposes in Holland, but that oils and greases for industrial purposes in those countries are supplied from the whale and fish oil

and other local products, that make it impossible for tallows
251 and tallow oils from this country to compete for industrial purposes in Holland, and that the only Holland market for any of the American products of this nature are for oleo oil for the manufacture of oleomargarine and butterine.

By Mr. McClay: I object to the offer first, because it is properly the examination in chief, and secondly, it is not sur-rebuttal to any testimony offered by the plaintiff in rebuttal, and third, the witness on the stand cannot testify of his own knowledge to anything other than what he acquired during two weeks' stay in Holland in 1912, and he is not competent.

Objection sustained.

Exception noted for defendant.

Twelfth. The Court erred in holding:

"Tallow or oleo oil is used not only for making soap, but for the production of glycerine, dynamite, and other industrial and commercial purposes, including the manufacture of oleomargarine."

Thirteenth. The Court erred in holding:

"It is not practicable to denature tallow oil without impairing in some degree its value. While the evidence disclosed that its value for lubricating or illuminating purposes would not be affected, and perhaps for some of the coarser products of industrial operations, yet the court is satisfied that denaturing would affect the value of the oil for some of the purposes for which it is used, as in the
252 manufacture of the finer soaps, tooth powders and other pharmaceutical preparations."

Fourteenth. The Court erred in holding:

"Neither oleo oil or tallow oil is sold by wholesale or retail grocers as a common article of food. While the evidence discloses the fact that some people have eaten both at times, yet the fair conclusion from the testimony is that neither is food."

Fifteenth. The Court erred in holding:

"Plaintiff's oil is sold in the market as tallow oil. It is not sold in the market as oleo oil at prices for which oleo oil sells."

Sixteenth. The Court erred in holding:

"It is urged, however, upon the part of the Government that because the tallow oil of the plaintiff cannot be distinguished from the oleo oil manufactured by the establishment to which the Act plainly applies, and because it might be used by some as a food, that therefore it is a meat food product within the meaning of the Act.

"If we accept as common knowledge historical facts and accept also the correctness of the position of the Government on this point, then the tallow candles which have been relished by Arctic explorers and their associates and the salted hides which were so carefully apportioned and distributed to the defenders at the siege of Londonderry were meat food products. In a civilized community, nothing can so destroy the desire for a manufac-
253 tured product as an article of food as to have the same marked conspicuously 'inedible.'

"The manufacturer of oleomargarine would not receive into his

establishment tierces of oil so marked, except under cover of night. The mere fact, however, that someone might use the product of the plaintiff contrary to plaintiff's intention, and in fraud and deception of the public, ought not of itself to be a cause for subjecting the plaintiff to the highly penal provision of the Act without express words and merely by implication."

Seventeenth. The Court erred in holding:

"By that certificate the shipper is required to say that his inedible food is not capable of being used as food by man. 'Capable' is the word that is specially objectionable in the definition as well as in the certificate described in the latter regulations. It requires the plaintiff to certify to what is not true."

Eighteenth. The Court erred in holding:

"So far as the evidence goes in this case, Power Distillate affects the taste as well as the value of the product of which it is a part. However, Tallow Oil so treated can perhaps support life as well as the product of the plaintiff, and is as capable of being used as food by man, as the product of the plaintiff, although perhaps with less gratification to the consumer. It seems therefore that the Secretary of Agriculture has exceeded his authority by the regulations intended to become effective on November 1, 1914, in that such regulations tend to broaden the scope of the Act of Congress."

254 Nineteenth. The Court erred in holding:

"It follows, therefore, that the act of defendant Totton notifying the defendant company not to transport the shipment of oil described in the certificate tendered to it, was not justified, and that the particular shipment of oil which was the immediate cause of the filing of the plaintiff's bill, and other shipments of like character when marked in the same way and when accompanied by similar certificates should be received and carried by the carrier."

Twentieth. The Court erred in entering the decree on January 20, 1915, granting a preliminary injunction.

Twenty-first. The Court erred in not entering a decree dismissing the plaintiff's bill.

Twenty-second. The Court erred in entering the final decree dated January 22, 1916.

Twenty-third. The Court erred in directing that the defendants should pay the costs.

Wherefore, the defendant prays that the said decree be reversed.

E. LOWRY HUMES,
United States Attorney,
B. M. PRICE,
Assistant United States Attorney,
Solicitors for G. E. Totten, Defendant.

255 *Stipulation.*

Filed February 8th, 1916.

It is hereby stipulated and agreed by counsel for both sides that the following shall constitute the record on appeal in the above entitled case and shall be printed in full:

1. Docket Entries.
2. Bill of Complaint.
3. Decree granting preliminary injunction, filed January 20, 1915.
4. Answer of G. E. Totten.
5. Replication of Pittsburgh Melting Company.
6. Testimony; no exhibits.
7. Opinion of the Court, filed January 17, 1916.
8. Final Decree, filed January 22, 1916.
9. Petition for allowance of appeal and Assignment of Errors, filed February 5th, 1916.
10. This stipulation and order of Court thereon.

E. LOWRY HUMES,
United States Attorney,
B. M. PRICE,
Assistant United States Attorney,
Solicitors for G. E. Totten, Defendant.
SAMUEL McCLAY,
REED, SMITH, SHAW & BEAL,
Solicitors for Complainant.

256 *Order of Court.*

And now, February 8th, 1916, on consideration of the foregoing stipulation and on motion of Benjamin M. Price, Solicitor for G. E. Totten, defendant and appellant, it is hereby ordered that the record on appeal be printed in accordance with said stipulation.

Per CURIAM.

Certificate.

WESTERN DISTRICT OF PENNSYLVANIA, *ss*:

I, J. Wood Clark, Clerk of the District Court of the United States, for the Western District of Pennsylvania, do hereby certify that the annexed and foregoing pages contain a true and correct copy of the record and proceedings ordered to be printed in the above entitled case, so full and entire as the same remains of record and on file in my office, in the City of Pittsburgh, in said District.

In Testimony Whereof, I have hereunto signed my name and affixed the seal of the said Court, at Pittsburgh, this — day of February, A. D. 1916.

—— ——, *Clerk.*

257 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1916.

No. 2093.

G. E. TOTTEN, Inspector, Appellant,
vs.
PITTSBURGH MELTING CO., Appellee.

And afterwards, to wit, on the fifth day of April, 1916, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Hon. Joseph Buffington, Hon. John B. McPherson, and Hon. Victor B. Woolley, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the twenty-second day of May, 1916, come the parties aforesaid by their counsel aforesaid, and the Court now being fully advised in the premises, renders the following decision:

258 In the United States Circuit Court of Appeals for the Third Circuit, March Term 1916.

In Equity. No. 2093.

G. E. TOTTEN, Inspector,
vs.
PITTSBURGH MELTING COMPANY, Plaintiff Below.

Appeal from the District Court of the United States for the Western District of Pennsylvania.

Before Buffington, McPherson, and Woolley, Circuit Judges.

MCPHERSON, *Circuit Judge:*

The decree of the court below enjoined the Baltimore & Ohio R. R. Co. and G. E. Totten, an inspector in the service of the Department of Agriculture, from interfering with certain export shipments of the Pittsburgh Melting Co. A full statement of the controversy will be found in 229 Fed. at page 214. Much that is there said need not be referred to now; in our opinion the decision of the present appeal turns upon a question of fact, and merely requires us to state briefly our conclusions upon that question. In a few preliminary words, the situation is this:

For many years the Melting Co. and its predecessors in business have been engaged in rendering, or converting, the fat of animals—chiefly, if not altogether, the fat of cattle, as we understand the evidence—into oil, stearine, tallow, cracklings, and grease. Noth-

ing except the oil is now in question; this, in the view of the
259 Company, is "tallow oil," while the government describes it as "oleo oil," the substance that is the basis constituent of oleomargarine. At one time, the Company was engaged in making oleomargarine; about 30 years ago, however, hostile Pennsylvania legislation compelled it to abandon the business, but the fact appears, and is relevant, that the oil now in question is made by the same appliances that the Company then used. About 90% of the Company's oil is carried to New York over the Baltimore & Ohio railroad, and is shipped from there to Holland and one or two other European countries. During several years after the Meat Inspection Acts went into effect (34 Stat. 674 and 1260), the plant of the Melting Co. was under government inspection, but the inspection was withdrawn in 1909 in consequence of a disagreement that need not now be gone into. In 1910 the Company was indicted for a violation of the Act, but was acquitted. As a result of the verdict, the Company discontinued a proceeding in equity that was then pending between the same parties and involved substantially the same subject-matter as is now before the court. During the next 5 years the Company shipped its oil abroad as an inedible fat, and was not interfered with by the Department. The tierces were labeled "Inedible," and in other respects the regulations of the Department then in force were complied with. But on November 1, 1914, new regulations went into effect, and among them was a requirement that a shipper of meat food products must certify that the product—

"* * * is not capable of being used as food by man, is suitable only for industrial purposes, is not for food purposes, and is of such character or for such a use that denaturing is impracticable."

This revived the disagreement, and in January 1915, the Company, while attempting to ship its oil under the old regulations, was prevented from doing so, until the district court restrained the defendants by preliminary, and afterwards by final, injunction.
260 The scope of the decree is sufficiently apparent from the opinion in 229 Fed., where it also appears that the vital question in the case is, whether the oil in dispute is, or is not, a meat food product.

By the express language of the Act, no meat food product can be shipped or carried in interstate or foreign commerce unless it has first been—

"* * * inspected, examined, and marked as 'inspected and passed,' in accordance with the terms of this Act and with the rules and regulations prescribed by the Secretary of Agriculture."

If therefore the oil is a meat food product, the statute denied it the right to be carried, for concededly it had neither been inspected nor examined nor officially marked. If it is not a meat food product, it is not included in the Act at all. In considering this question, we remark first, that the substance under inquiry is clearly proved to be "oleo oil." Apparently there is little, if any chemical difference between tallow oil and oleo oil, but they differ distinctly in methods

of manufacture, and in appearance, taste, and smell. As already stated, the plaintiff makes its oil by the same machinery that was formerly used in the manufacture of oleomargarine; moreover, it is made by the process that is appropriate for rendering oleo oil, and not by the process employed for rendering tallow oil; and finally, it exhibits all the characteristics of the former substance. Whatever name one may choose to give it, the evidence leaves us no room to doubt what it really is.

Being oleo oil, therefore, is it a meat food product? It is of course a meat product,—Is it a food? In its condition as an oil immediately after rendering, it is occasionally eaten as food just as olive oil is eaten, but so rarely that we lay no stress upon that fact; but the evidence shows without contradiction, that for shortening purposes, and as a grease in cooking, it is often used by bakers and
261 householders just as lard is used; and still further, that without being refined or undergoing any chemical change it is the principal ingredient of oleomargarine. In manufacturing this substitute for butter, oleo oil is mechanically mixed by churning with other substances, such as milk, a little butter, salt, neutral lard, or cotton-seed oil. What the oleo oil was before the mixing, it continues to be afterward, and there can be no doubt that the mixture is fit for human consumption and is largely used for food. The oil has probably some industrial uses also, altho' the evidence is not very clear on this point, but we think there can be no reasonable question that its chief use is to be the base of oleomargarine. Of this substance it constitutes more than 50%. As a food product, we see no essential difference between oleo oil and lard, and it can hardly be questioned that lard is a food. Nor, indeed, do we see any essential difference as a food between olive oil and oleo oil. The former is probably more palatable and is more often used alone, but its chief use is to be mixed with other foods for flavoring purposes. Obviously, the fact that the oleo oil has not been cooked is not decisive. A raw egg is food before as well as after it is mixed with the other ingredients of a salad dressing; and lard is food before as well as after it is mixed with flour and water. Indeed to our minds the proposition under discussion seems so evident that we find some difficulty in giving reasons to support it. Congress has excluded from interstate and from foreign commerce all uninspected meat food products, and as this was within the legislative power the duty of the court is to enforce the law.

If this conclusion is sound, the other questions considered below and argued here cease to be important. Being a meat food product, the plaintiff's oleo oil could not be carried in interstate or in foreign commerce—in this case, to Holland—without previous inspection, and, as the shipment that gave rise to the dispute had not been in-
spected, the defendants were justified in the course of conduct
262 they pursued.

As a final word we may add that the Melting Company does not make oleomargarine, and does not knowingly sell oleo oil directly to such manufacturers, either here or abroad; what is done with the oil after it reaches the consignees in other states or in other

countries, is a matter beyond the company's control. But of course this consideration is not controlling; Congress has chosen to forbid interstate and foreign commerce in meat food products unless they have previously been inspected here, and, as we have already pointed out, the question before us now is merely one of legislative power and of statutory construction. We may also say, that the Department's regulations permit shipments of oleo oil after it has been "denatured," i. e., so treated by the addition of some substance (for example, power distillate, a petroleum product) as to prevent its use as a food while leaving its value for industrial purposes practically unimpaired. We refer to these matters to show that they have not been overlooked; they do not affect the course of the argument or the conclusion we have reached.

The decree is reversed with instructions to dismiss the bill.

Endorsed: No. 2093. Opinion of the Court, by McPherson, J. Received and filed May 22, 1916. Saunders Lewis, Jr., Clerk.

263 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1916.

No. 2093 (List No. 28).

G. E. TOTTEN, Inspector, Appellant,
vs.
PITTSBURGH MELTING CO., Appellee.

Appeal from the District Court of the United States for the Western District of Pennsylvania.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Western District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decree by this Court, that the decree of the said District Court in this cause be, and the same is hereby reversed, with instructions to dismiss the bill.

(Signed) JOHN B. McPHERSON,
Circuit Judge.

Philadelphia, May 22, 1916.

Endorsed: No. 2093. Order Reversing Decree, etc. Received and filed May 22, 1916. Saunders Lewis, Jr., Clerk.

264 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1916.

No. 2093.

G. E. TOTTEN, Inspector of the Bureau of Animal Industry of the Department of Agriculture, Appellant,
vs.
PITTSBURGH MELTING COMPANY, Appellee.

Petition.

Pittsburgh Melting Company, appellee above named, respectfully shows:

That the above entitled cause is now pending in the United States Circuit Court of Appeals for the Third Circuit, and that a judgment or decree therein was entered on the 22nd day of May, A. D. 1916, reversing the decree of the District Court of the United States for the Western District of Pennsylvania, with instructions to dismiss the bill of complaint filed in the Court below by the appellee; that the matter in controversy in said suit exceeds $1,000, besides costs; that this cause is one in which the United States Circuit Court of Appeals for the Third Circuit has not final jurisdiction, and is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore, the appellee, the Pittsburgh Melting Company, prays that an appeal be allowed it in the above entitled cause, directing the Clerk of the United States Circuit Court of Appeals for the Third Circuit to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignments of error herewith filed by the said appellee may be reviewed, and
265 if error be found, corrected, according to the laws and customs of the United States.

(Signed) SAMUEL McCLAY,
DAVID A. REED,
WM. M. ROBINSON,
REED, SMITH, SHAW & BEAL,
Attorneys for Pittsburgh Melting Company.

Endorsed: No. 2093. Petition. Received and filed May 31, 1916. Saunders Lewis, Jr., Clerk.

266 In the United States Circuit Court of Appeals for the Third Circuit.

G. E. TOTTEN, Inspector of the Bureau of Animal Industry of the Department of Agriculture, Appellant,
vs.
PITTSBURGH MELTING COMPANY, Appellee.

Assignments of Error.

The Pittsburgh Melting Company, appellee in the above entitled case and appellant in its appeal to the Supreme Court of the United States from the decree of the United States Circuit Court of Appeals for the Third Circuit, by Samuel McClay and William M. Robinson, its solicitors, says,

That there is error in the decree entered by the United States Circuit Court of Appeals for the Third Circuit, and in the record and proceedings therein, as follows:

First. The Court erred in its decree which reads as follows: "The decree is reversed, with instructions to dismiss the bill."

Second. The Court erred in not affirming the decree of the District Court of the United States for the Western District of Pennsylvania, dated January 22, 1916, restraining G. E. Totten, the appellant in the above entitled case, and appellee in the appeal to the Supreme Court of the United States, and his successors in office and his or their assistant inspectors or other employees, from in any way interfering with the Pittsburgh Melting Company, the Baltimore & Ohio Railroad Company, or any other railroad company, in tend-
267 ering, receiving, transporting and delivering any oleo or tallow oil manufactured by the appellee in the above entitled case tendered by it to any of said railroad companies for interstate or foreign shipment, so long as the containers in which the oil was tendered for shipment were labelled "inedible," and so long as the Pittsburgh Melting Company, the appellee, should make and deliver to the railroad company with each shipment, a certificate certifying in substance that the oleo or tallow oil which was tendered for shipment in interstate or foreign commerce was inedible and was not intended for food purposes, and that the oil was of such character or intended for such use that denaturing was impossible and would render the oil unavailable for the desired industrial use.

Third. The Court erred in holding and deciding that the oil which the appellee in the above entitled case shipped to Daniel Loeb, Rotterdam, Holland, by way of the Baltimore & Ohio Railroad, on January 15, 1915, the subject matter immediately involved in this controversy, was a meat food product.

Fourth. The Court erred in holding and deciding that oleo oil is used for shortening purposes and as a grease in cooking, and is often used by bakers and householders just as lard is used, and that without being refined, or undergoing any chemical change, it is the principal ingredient of oleomargarine.

Fifth. The Court erred in holding and deciding that the oil manufactured by the appellee in the above entitled case and shipped by it in interstate or foreign commerce under the name of tallow oil, could not be lawfully carried in interstate or foreign commerce without previous inspection, and as the shipment which gave rise to the dispute had not been inspected, the appellant in the above en-
268 titled case was justified in the course of conduct he pursued.

Sixth. The Court erred in holding and deciding that Section Six of Regulation Four of the Secretary of Agreculture, promulgated July 15, 1914, effective November 1, 1914, part of the Regulation known as Bureau of Animal Industry Order No. 211, which reads as follows:

"Regulation 4, Section 6.

Paragraph 1. The proprietor or operator of each grease rendering or grease refining establishment, and of every other establishment which has not been granted inspection or exemption, which prepares or ships any article or articles derived wholly or in part from cattle, sheep, swine or goats for interstate or foreign commerce, or in the District of Columbia, a Territory, or other place under the jurisdiction of the United States, which article or articles it is claimed are not capable of being used as food by man, shall file with the Secretary of Agriculture a declaration that none of such articles are for human consumption, nor will be sold or shipped from such establishment otherwise than in compliance with these regulations, and that no article for human consumption derived wholly or in part from cattle, sheep, swine, or goats will be prepared at or in such establishment or will be sold or shipped therefrom. Such establishments may be inspected at any time to ascertain whether any article derived wholly or in part from cattle, sheep, swine, or goats is prepared therein for human consumption, or whether any declaration filed or offered for filing is false in any particular.

Paragraph 2. The proprietor or operator of each establishment which has been granted inspection or exemption and which prepares therein any article or articles derived wholly or in part from cattle, sheep, swine, or goats, for interstate or foreign commerce, or in the District of Columbia, a Territory, or other place under the jurisdiction of the United States, which article or articles it is claimed are not capable of being used as food by man, shall file with the Secretary of Agriculture a declaration that none of such articles are for human consumption, nor will be sold or shipped from such establishment otherwise than in compliance with these regulations.

Paragraph 3. The Secretary of Agriculture may refuse to file, or if previously filed, may withdraw from his files and cancel, any declaration which is false in any particular, or the terms of which are violated in any respect;"

was reasonable and within the scope of the Meat Inspection Act, and in not holding that said Regulation was unreasonable, beyond the power of the Secretary of Agriculture to make, and invalid.

Seventh. The Court erred in holding and deciding that
269 Section Twelve of Regulation Twenty-five of the Secretary of Agriculture, promulgated July 15, 1914, effective November 1, 1914, part of the Regulation known as Bureau of Animal Industry Order No. 211, which reads as follows:

"Regulation 25, Section 12.

When inedible grease or tallow or other inedible article derived wholly or in part from cattle, sheep, swine or goats, suitable only for industrial use, is of such a nature or for such an industrial use that it is impracticable to denature the same, such product may be transported from one State or Territory or the District of Columbia to or through another State or Territory or the District of Columbia, or to any place under the jurisdiction of the United States, or to a foreign country, without denaturing, if both ends of the containers are painted white and conspicuously stenciled or burned with the true name of the product and the word 'inedible' in letters not less than two inches high, and the other provisions of this section are complied with. The carrier shall require, and the shipper shall make and deliver to the carrier, a certificate in duplicate in the following form:

Date, —— —, 191–.

Inedible Fat.

Name of carrier, —— ——.
Consignor, —— ——.
Point of shipment, —.
Consignee, —— ——.
Destination, —.

I hereby certify that the following described fat is not capable of being used as food by man, is suitable only for industrial purposes, is not for food purposes, and is of such a character and for such a use that denaturing is impracticable. I further certify that there is now on file with the Secretary of Agriculture a declaration by the establishment in which said fat was prepared, or from which it is offered for shipment in compliance with Section 6 of Regulation 4 of the regulations of the Secretary of Agriculture governing meat inspection.

Kind of product.	Amount and weight.
.....	.....
.....	.....
.....	.....

.....
(Signature of shipper.)

.....
(Business or occupation of shipper.)

.....
(Address of shipper.)

The signature of the shipper or of his agent shall be written in full. This certificate shall be separate and apart from any waybill, bill of lading, or other form ordinarily used in the trans-
270 portation of meat. The duplicate certificate shall be forwarded immediately by the initial carrier to the Chief of the Bureau of Animal Industry, Washington, D. C.

As evidence to connecting carriers that the proper shipper's certificate is on file with the initial carrier, the waybills, transfer slips, running slips, or conductor's cards accompanying such shipments shall have embodied therein, stamped thereon, or attached thereto a signed statement in the following form:

"Name of Transportation Company.

Inedible and suitable only for industrial purposes, as evidenced by shipper's certificate on file with initial carrier.

(Signed) —— ——, *Agent.*

The signature of the agent shall be written in full."

was reasonable and within the scope of the Meat Inspection Act, and in not holding that said Regulation was unreasonable, beyond the power of the Secretary of Agriculture to make, and invalid.

Eighth. The Court erred in not holding and deciding that the evidence showed that the appellee in the above entitled case purchased its fats from farmers, retail butchers and retail dealers in meat and meat food products, supplying their customers, and that the appellee in the above entitled case, as purchaser from them, was entitled to offer for transportation in interstate or foreign commerce its oils manufactured from such fats, provided it did not sell or offer for sale or transportation, in interstate or foreign commerce, any meat or meat food products which were diseased, unsound, unhealthful, unwholesome, or otherwise unfit for human food, knowing that such meat food products were intended for human consumption.

Ninth. The Court erred in holding and deciding that the oil which the appellee in the above entitled case shipped or offered for shipment in interstate or foreign commerce was oleo oil, and not tallow oil.

Tenth. The Court erred in not holding and deciding that the oils manufactured by the appellee in the above entitled case,
271 and sold and shipped, or offered for shipment in interstate or foreign commerce, intended for industrial uses, are not subject to the Meat Inspection Act.

Eleventh. The Court erred in not holding and deciding that the Act of Congress of June 30, 1906, entitled, "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1907," approved June 30, 1906, and commonly known as the "Meat Inspection Amendment," is null and void for, among others, the following reasons: (*a*) the act is beyond the power of Congress to enact, (*b*) the system of inspection thereby provided

does not relate to or concern interstate commerce, (*c*) the act is in violation of the Fifth Amendment of the Constitution of the United States.

For which errors, the Pittsburgh Melting Company, the Appellee in the above entitled case, prays that the judgment or decree of the United States Circuit Court of Appeals for the Third Circuit dated May 22, 1916, be reversed, and a decree be entered affirming the decree of the District Court of the United States for the Western District of Pennsylvania in favor of the appellee, and for costs.

(Signed) SAMUEL McCLAY,
DAVID A. REED,
WM. M. ROBINSON,
Solicitors for Pittsburgh Melting Company, Appellee.

F—6.

Endorsed: No. 2093. Assignments of Error. Received and filed May 31, 1916. Saunders Lewis, Jr., Clerk.

272 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1916.

No. 2093.

G. E. TOTTEN, Inspector of the Bureau of Animal Industry of the Department of Agriculture, Appellant,
vs.
PITTSBURGH MELTING COMPANY, Appellee.

Affidavit as to Amount in Controversy.

COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, City of Pittsburgh, ss:

Hay Walker, Jr., of said County, being duly sworn on his oath, says:

That he is Treasurer of the Pittsburgh Melting Company, the appellee in the above entitled case, and he is personally acquainted with its business affairs; that the amount involved in this controversy exceeds three thousand dollars, besides the costs; that the value of the tallow oil which the Pittsburgh Melting Company, the appellee, delivered to the Baltimore & Ohio Railroad for shipment to Daniel Loeb, Amsterdam, Holland, on January 15, 1915, and which G. E. Totten, the appellant in the above entitled case, notified the Baltimore & Ohio Railroad not to forward, which action occasioned the Pittsburgh Melting Company, the appellee, to file its bill in equity in the Court below praying for an injunction, was $3,428.73; that the losses and damages which the Pittsburgh Melting Company will sustain by reason of the dismissal of its bill and the dissolution of the injunction, and being prevented from
273 shipping its tallow oil in interstate and foreign commerce, will largely exceed said sum of three thousand dollars, as

it will deprive it of the use of its plant, in which it has invested more than one hundred thousand dollars, and in which it employs about forty persons; that if the judgment of the United States Circuit Court of Appeals for the Third Circuit is not reversed, and appellee's bill is dismissed and the injunction heretofore granted dissolved, appellee will not be permitted to use in the manufacture of its tallow oil the fats purchased from retail dealers, but it will be required to purchase the fats from inspected establishments, and to pay sums greatly in excess of the prices at which it can now purchase fats from retail dealers, and it may not be able to purchase these fats at all, and it will be subjected to irreparable injury and damage.

(Signed) HAY WALKER, JR.

Sworn and subscribed before me this 26th day of May, A. D. 1916.

(Signed) L. H. DIERKEN, [SEAL.]
Notary Public.

My Commission expires Feb'y 21st, 1919.

Endorsed: No. 2093. Affidavit as to amount in Controversy Received and filed May 31, 1916. Saunders Lewis, Jr., Clerk.

274 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1916.

No. 2093.

G. E. TOTTEN, Inspector of the Bureau of Animal Industry of the Department of Agriculture, Appellant,
vs.
PITTSBURGH MELTING COMPANY, Appellee.

Order.

It is hereby ordered that the appeal in the above entitled cause to the Supreme Court of the United States, be and is hereby allowed, as prayed.

(Signed) JOS. BUFFINGTON.

Endorsed: No. 2093. Order Allowing Appeal Received and filed May 31, 1916. Saunders Lewis, Jr., Clerk.

275 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1916.

No. 2093.

G. E. TOTTEN, Inspector of the Bureau of Animal Industry of the Department of Agriculture, Appellant,
vs.
PITTSBURGH MELTING COMPANY, Appellee.

Order.

It is hereby ordered that the appeal in the above entitled cause to the Supreme Court of the United States shall operate as a supersedeas to the decree made by the United States Circuit Court of Appeals for the Third Circuit, May 22, 1916, which reads, "The decree is reversed, with instructions to dismiss the bill," and the injunction granted by the District Court of the United States for the Western District of Pennsylvania at No. 12 May Term, 1915, shall continue and remain in force, and the mandate is stayed, pending the determination of the appeal to the Supreme Court of the United States, and the Pittsburgh Melting Company, the appellee in the above entitled case, shall file a bond in the sum of five hundred dollars, conditioned that it shall prosecute its appeal with effect, and answer all damages and costs if it fails to make said appeal good.

(Signed) JOS. BUFFINGTON,
Circuit Judge.

Endorsed: No. 2093. Order as to supersedeas and bond Received and filed May 31, 1916. Saunders Lewis, Jr., Clerk.

276 In the United States Circuit Court of Appeals for the Third Circuit.

G. E. TOTTEN, Inspector of the Bureau of Animal Industry of the Department of Agriculture, Appellant,
vs.
PITTSBURGH MELTING COMPANY, Appellee.

Bond.

Know all men by these presents:

That we, Pittsburgh Melting Company, a corporation created and existing under the laws of the Commonwealth of Pennsylvania, having its principal office in the City of Pittsburgh, County of Allegheny, in said Commonwealth, and United States Fidelity and Guaranty Company, a corporation created and existing under the laws of the State of Maryland, having its principal office in the City of Baltimore, in said State, are held and firmly bound unto

G. E. Totten, Inspector of the Bureau of Animal Industry of the Department of Agriculture, in the sum of Five Hundred ($500) Dollars, to be paid to the said G. E. Totten, to which payment well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 29th day of May, 1916.

Whereas, the Pittsburgh Melting Company, the appellee in the above entitled suit, has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the United States Circuit Court of Appeals for the Third Circuit on the 22d day of May, 1916;

Now, therefore, the condition of this obligation is such,
277 that if the Pittsburg Melting Company shall prosecute said appeal with effect, and answer all damages and costs if it fails to make said appeal good, then this obligation to be void; otherwise to remain in full force and effect.

PITTSBURGH MELTING COMPANY,
By WM. G. HASLEY, *Vice President.*

[Seal of the Company.]

Attest:
HAY WALKER, Jr., *Secretary.*

UNITED STATES FIDELITY & GUARANTY COMPANY,
By H. D. ABELE, *Attorney in Fact.*

Attest:
R. J. BROWN.

May 29th, 1916: The foregoing bond is hereby approved and ordered to be filed.

(Signed) JOS. BUFFINGTON,
Circuit Judge.

Endorsed: No. 2093. Bond. Received and filed May 31, 1916. Saunders Lewis, Jr., Clerk.

278 In the United States Circuit Court of Appeals for the Third Circuit.

G. E. Totten, Inspector of the Bureau of Animal Industry of the Department of Agriculture, Appellant,
vs.
Pittsburgh Melting Company, Appellee.

Notice.

We serve you herewith with copy of the petition of the appellee in the above entitled case for an appeal to the Supreme Court of the

United States, together with the assignments of error and form of bond. The bond will be executed as well by the appellee as by the United States Fidelity and Guaranty Company of Baltimore, Maryland.

(Signed) SAMUEL McCLAY,
DAVID A. REED,
WM. M. ROBINSON,
Attorneys for Appellee.

To E. Lowry Humes, United States District Attorney for the Western District of Pensylvania.

May 29, 1916: Service of foregoing notice, with copies of petition, assignments of error and form of bond, accepted.

(Signed) E. LOWRY HUMES,
United States District Attorney for the Western District of Pennsylvania.

Endorsed: No. 2093. Notice and Acceptance Received and filed June 1, 1916. Saunders Lewis, Jr., Clerk.

279 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, set:

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby Certify the foregoing to be a true and faithful copy of the original transcript of record and proceedings in this Court in the case of G. E. Totten, Inspector of the Bureau of Animal Indistustry of the Department of Agriculture, Appellant, vs. Pittsburgh Melting Company, Appellee, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this sixth day of June in the year of our Lord one thousand nine hundred and sixteen and of the Independence of the United States the one hundred and fortieth.

[Seal United States Circuit Court of Appeals, Third Circuit.]

SAUNDERS LEWIS, JR.,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

280 UNITED STATES OF AMERICA, *ss:*

To G. E. Totten, Inspector of the Bureau of Animal Industry of the Department of Agriculture, Greeting:

[Seal United States Circuit Court of Appeals, Third Circuit.]

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days

from the date hereof, pursuant to a petition for appeal and order allowing same, filed in the Clerk's office of the United States Circuit Court of Appeals for the Third Circuit, wherein the Pittsburgh Melting Company is Appellant and you are Appellee, to show cause, if any there be, why the decree entered against the said Appellant, as in the said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 2nd day of June, in the year of our Lord one thousand nine hundred and sixteen.

JOHN B. McPHERSON,
Circuit Judge.

Service of the foregoing citation accepted this fifth day of June, 1916.

E. LOWRY HUMES,
United States Attorney,
Attorney for G. E. Totten, Inspector.

Endorsed on cover: File No. 25,355. U. S. Circuit Court Appeals, 3d Circuit. Term No. 525. Pittsburgh Melting Company, appellant, vs. G. E. Totten, Inspector of the Bureau of Animal Industry of the Department of Agriculture. Filed June 13th, 1916. File No. 25,355.

Office Supreme Court, U. S.
FILED
AUG 20 1917
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States

1[redacted]28

No. 525 OCTOBER TERM, 1916.

PITTSBURGH MELTING COMPANY, Appellant,

vs.

G. E. TOTTEN, Inspector of the Bureau of Animal Industry of the Department of Agriculture, Appellee.

Appeal from the United States Circuit Court of Appeals for the Third Circuit.

BRIEF ON BEHALF OF APPELLANT.

SAMUEL McCLAY,
Attorney for Appellant.

WILLIAM M. ROBINSON,
ALLEN H. KERR,
Of Counsel.

Smith Bros. Co. Inc., Franklin Print, 407-409 Grant Street, Pittsburgh, Pa.

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   (a) It does not sell or transport tallow oil as a food for human consumption.
   (b) It sells its entire product for industrial uses.
2. Appellant purchases fats from which to manufacture the oil offered by it for transportation in in-

terstate commerce from retail butchers and dealers, excluded from the provisions of the Act, and from inspected wholesalers sells this oil as inedible and for industrial purposes, and not as a food, and, therefore, had a right to offer this oil for transportation in interstate commerce without interference from the Department of Agriculture so long as it was not unwholesome or unhealthful.

3. The tallow oil which the appellant manufactures and offers for transportation is not a meat or meat food product within the meaning of the Acts of Congress, and the Secretary of Agriculture had no right to require appellant to certify that it was not capable of being eaten by man.

4. The Acts of Congress contain no prohibition against offering oils and greases not actually or ordinarily used as food or intended for human consumption in interstate or foreign commerce.

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IN THE

Supreme Court of the United States

No. 525 OCTOBER TERM, 1916.

PITTSBURGH MELTING COMPANY, Appellant,

vs.

G. E. TOTTEN, Inspector of the Bureau of Animal Industry of the Department of Agriculture, Appellee.

Appeal from the United States Circuit Court of Appeals for the Third Circuit.

Questions Involved.

(A) Appellant manufactures its oils from beef fats purchased from retail butchers and retail dealers, expressly exempted from the provisions of the Act, and from inspected wholesalers, and sells and transports them in interstate commerce, solely for use in the industries, in containers upon which are clearly stamped the words "Tallow Oil" and "Inedible," and delivers to

the Railroad Company a certificate that the oils are intended for industrial uses and not for food. Is the business, plant, or product of appellant within the scope of the Act of Congress commonly known as the Meat Inspection Act of 1906, 1907 (34 Stat. at Large 760; 1260).

(B) Is the rule or regulation of the Secretary of Agriculture, effective November 1, 1914, requiring appellant to certify that the oils made from beef fats which it sells as inedible and intended for industrial uses, and offers for transportation in interstate commerce, are not capable of being used as food by man, reasonable and valid?

(C) Is the oil which appellant offers for transportation in interstate commerce, as tallow oil, a meat food product within the meaning of the Act of Congress?

(D) Even if appellant's product had been intended for human food, was it entitled to the exemption given retail butchers and retail dealers from whom it bought its fats, that is, could it offer the oils produced from these fats in interstate and foreign commerce without being marked "Inspected and Passed," if they were not diseased, unsound, unhealthful, unwholesome, or otherwise unfit for human food?

(E) Is the Meat Inspection Act intended to prohibit in interstate and foreign commerce all oils and greases rendered from beef fats without being stamped "Inspected and Passed," irrespective of the uses for which they were intended?

Statement of the Case.

The appellant filed a bill in equity in the District Court of the United States for the Western District of Pennsylvania against the Baltimore & Ohio Railroad Company and G. E. Totten, an Inspector in the service of the Department of Agriculture, praying that they be enjoined from refusing to transport or from interfering with the transportation of an export shipment of tallow oil, which appellant had delivered to the Baltimore & Ohio Railroad Company for transportation over its line, consigned to a purchaser in Rotterdam, Holland.

The Bill of Complaint averred and the testimony showed the facts to be:

The appellant and its predecessors had been engaged in the business of the manufacture of tallow oil and similar products in Pittsburgh and vicinity for more than seventy-eight years. In 1881 appellant began the manufacture of oleomargarine, which it continued for a period of five or six years, when the Legislature of Pennsylvania passed an Act prohibiting the manufacture of that product. It then stopped producing oleomargarine and ever thereafter operated its plant, without change of machinery or equipment, in the manufacture of tallow oils, stearine, greases, cracklings and stock. It did not knowingly sell tallow oil to manufacturers of oleomargarine, but it did sell its product exclusively to dealers in oils and greases, and manufacturers of soap, and to railroad companies, oil companies and steel companies. Before the present

war, it sold and shipped to Holland, Sweden, and other European countries from seventy-five to ninety per cent of its product.

Both tallow and oleo oils are made by rendering the fat of beef cattle. Oleo oil is the product of the caul, ruffle and heart fat of slaughtered cattle. Tallow oil is the product of fat taken from every portion of the animal.

Appellant purchased the fats of the entire animal from butchers and retail dealers who were not subject to inspection, in Pittsburgh and vicinity, and from inspected wholesalers. In purchasing these fats it used great care and selected only the best and purest, so that the oils which it manufactured could be readily sold for any industrial use to which they might be adapted.

After the passage of the Meat Inspection Act of June 30, 1906, appellant submitted itself to inspection. On May 10, 1909, the Government Inspector notified it not to use fats which it purchased from local retail dealers or butchers (not subject to the Meat Inspection Act), and required it to obtain its fats only from inspected establishments. Thinking that its establishment was not within the scope of the Act of June 30, 1906, and that the Act gave it the right to purchase fats from such retail dealers and butchers, appellant declined to comply with the notice, whereupon the Bureau of Animal Industry immediately withdrew its Inspector. After the withdrawal of inspection, appellant marked and shipped its product solely as inedible, in strict accordance with the rules and regulations of the United States Department of Agriculture of April 1, 1908. It continued to make its shipments in this way until July, 1910, when the Inspector for the District in

which it was located, notified the Baltimore & Ohio Railroad Company not to carry a shipment of tallow oil which appellant had consigned to one of its customers in Holland, whereupon the Baltimore & Ohio Railroad refused to make the shipment. Appellant then filed a bill of complaint in equity in the Circuit Court of the United States for the Western District of Pennsylvania against the Baltimore & Ohio Railroad, and G. E. Totten, Inspector of the Bureau of Animal Industry of the Department of Agriculture, praying that the Baltimore & Ohio Railroad should be required to proceed with the transportation and delivery of the shipment, and that G. E. Totten, the Inspector, be restrained from interfering therewith.

Shortly thereafter, the said G. E. Totten made an information against appellant and W. H. Womsley, its General Manager, upon which an indictment was obtained, charging them with unlawfully offering to the Baltimore & Ohio Railroad Company oleo oil, a meat food product, for transportation in interstate commerce, without first having been marked "Inspected and Passed." The criminal case was tried and a verdict was rendered in favor of the appellant. Believing that the verdict and judgment in the criminal case determined that;

(a) Appellant's establishment was not within the scope of the Meat Inspection Act;

(b) Tallow oil was not a meat food product; and,

(c) It was not a violation of the Act to use fats obtained from retail dealers and butchers not subject to inspection, and to ship the oils produced therefrom in interstate, and foreign commerce; it discontinued the equity proceeding.

From the time of the rendition of the verdict in the criminal case until January 15, 1915, appellant continued to make shipments of tallow oil to its customers throughout the United States and foreign countries, without complaint from the Government. However, it always accompanied these shipments with signed certificates in the form prescribed by the rules and regulations of the Department of Agriculture of April 1, 1908, wherein it was stated that the tallow oil was inedible and not intended for food purposes.

On January 15, 1915, appellant delivered to the Baltimore & Ohio Railroad one hundred tierces of tallow oil, for shipment over the lines of its railroad to New York, thence by steamer sailing from the Port of New York to Rotterdam, Holland. Both ends of these tierces were painted white, and there was conspicuously stenciled or burnt thereon the word "Tallow Oil," the true name of the product, and the word "Inedible," and on January 20, 1915, it executed and delivered to the Baltimore & Ohio Railroad a certificate stating that the fat delievered to it on January 15, 1915, was inedible, and was not intended for food purposes, and was of such character and intended for such use that denaturing was impossible and would render the fat unavailable for the desired industrial use.

G. E. Totten, the appellee, notified the Baltimore & Ohio Railroad Company not to transport the shipment of oil described in the certificate. The Railroad Company immediately notified the appellant of the notice served on it and refused to make the shipment, whereupon the appellant filed its bill of complaint and a preliminary injunction was issued against the appellee and the Baltimore & Ohio Railroad Company.

The reason assigned by G. E. Totten, the appellee, for the notice given by him to the Baltimore & Ohio Railroad Company not to forward the shipment, was that the appellant had not complied with the regulation which had become effective November 1, 1914, requiring appellant to certify that the oils offered for transportation were not "capable of being used as food by man." This certificate appellant declined to sign, for the reason that it would have contained an untruth, as the oils, which appellant offered for shipment, were pure and healthful and contained no injurious substance. Appellant had sold these oils as inedible, and such they were.

The case was tried and the Judge of the District Court of the United States for the Western District of Pennsylvania sustained the bill and granted a permanent injunction. The District Court found that the oils were not a meat food product within the meaning of the Act of Congress, were in fact tallow oils, not ordinarily used for human food, and were produced from fats purchased from retail butchers and dealers in meats, not subject to inspection, and from inspected wholesalers. A decree was entered in favor of the appellant in the District Court, from which an appeal was taken to the United States Circuit Court of Appeals for the Third Circuit, and after argument, the decree of the Court below was reversed, with directions to dismiss the bill, that Court holding that the oil which appellant offered for shipment was a meat food product. From the decree of the United States Circuit Court of Appeals this appeal was taken.

Specifications of Error Relied Upon.

FIRST. The Court below erred in its decree which reads as follows: "The decree is reversed, with instructions to dismiss the bill."

SECOND. The Court below erred in not affirming the decree of the District Court of the United States for the Western District of Pennsylvania, dated January 22, 1916, restraining G. E. Totten, the appellant in the above entitled case, and appellee in the appeal to the Supreme Court of the United States, and his successors in office and his or their assistant inspectors or other employees, from in any way interfering with the Pittsburgh Melting Company, the Baltimore & Ohio Railroad Company, or any other railroad company, in tendering, receiving, transporting and delivering any oleo or tallow oil manufactured by the appellee in the above entitled case tendered by it to any of said railroad companies for interstate or foreign shipment, so long as the containers in which the oil was tendered for shipment were labeled "inedible," and so long as the Pittsburgh Melting Company, the appellee, should make and deliver to the railroad company with each shipment, a certificate certifying in substance that the oleo or tallow oil which was tendered for shipment in interstate or foreign commerce was inedible and was not intended for food purposes, and that the oil was of such character or intended for such use that denaturing was impossible and would render the oil unavailable for the desired industrial use.

THIRD. The Court below erred in holding and deciding that the oil which the appellant shipped to Daniel Loeb, Rotterdam, Holland, by way of the Baltimore & Ohio Railroad, on January 15, 1915, the subject matter immediately involved in this controversy, was a meat food product.

FOURTH. The Court below erred in holding and deciding that oleo oil is used for shortening purposes and as a grease in cooking, and it is often used by bakers and householders just as lard is used, and that without being refined, or undergoing any chemical change, it is the principal ingredient of oleomargarine.

FIFTH. The Court below erred in holding and deciding that the oil manufactured by the appellant and shipped by it in interstate or foreign commerce under the name of tallow oil, could not be lawfully carried in interstate or foreign commerce without previous inspection, and as the shipment which gave rise to the dispute had not been inspected, the appellee was justified in the course of conduct he pursued.

SIXTH. The Court below erred in holding and deciding that Section Six of Regulation Four of the Secretary of Agriculture, promulgated July 15, 1914, effective November 1, 1914, part of the Regulation known as Bureau of Animal Industry Order No. 211, which reads as follows:

"REGULATION 4, SECTION 6.

Paragraph 1. The proprietor or operator of each grease rendering or grease refining establishment, and of every other establishment which has

not been granted inspection or exemption, which prepares or ships any article or articles derived wholly or in part from cattle, sheep, swine or goats for interstate or foreign commerce, or in the District of Columbia, a Territory, or other place under the jurisdiction of the United States, which article or articles it is claimed are not capable of being used as food by man, shall file with the Secretary of Agriculture a declaration that none of such articles are for human consumption, nor will be sold or shipped from such establishment otherwise than in compliance with these regulations, and that no article for human consumption derived wholly or in part from cattle, sheep, swine, or goats will be prepared at or in such establishment or will be sold or shipped therefrom. Such establishments may be inspected at any time to ascertain whether any article derived wholly or in part from cattle, sheep, swine, or goats is prepared therein for human consumption, or whether any declaration filed or offered for filing is false in any particular.

Paragraph 2. The proprietor or operator of each establishment which has been granted inspection or exemption and which prepares therein any article or articles derived wholly or in part from cattle, sheep, swine, or goats, for interstate or foreign commerce, or in the District of Columbia, a Territory, or other place under the jurisdiction of the United States, which article or articles it is claimed are not capable of being used as food by man, shall file with the Secretary of Agriculture a declaration that none of such articles are for human consumption, nor will be sold or shipped

from such establishment otherwise than in compliance with these regulations.

Paragraph 3. The Secretary of Agriculture may refuse to file, or if previously filed, may withdraw from his files and cancel, any declaration which is false in any particular, or the terms of which are violated in any respect;"

was reasonable and within the scope of the Meat Inspection Act, and in not holding that said Regulation was unreasonable, beyond the power of the Secretary of Agriculture to make, and invalid.

SEVENTH. The Court below erred in holding and deciding that Section Twelve of Regulation Twenty-five of the Secretary of Agriculture, promulgated July 15, 1914, effective November 1, 1914, part of the Regulation known as Bureau of Animal Industry Order No. 211, which reads as follows:

"REGULATION 25, SECTION 12.

When inedible grease or tallow or other inedible article derived wholly or in part from cattle, sheep, swine or goats, suitable only for industrial use, is of such a nature or for such an industrial use that it is impracticable to denature the same, such product may be transported from one State or Territory or the District of Columbia to or through another State or Territory or the District of Columbia, or to any place under the jurisdiction of the United States, or to a foreign country, without denaturing, if both ends of the containers are painted white and conspicuously stenciled or burned with the true name of the product and the word 'inedible' in letters not less than

two inches high, and the other provisions of this section are complied with. The carrier shall require, and the shipper shall make and deliver to the carrier, a certificate in duplicate in the following form:

Date.....19.....

INEDIBLE FAT

Name of carrier, ...
Consignor, ...
Point of shipment, ...
Consignee, ...
Destination, ...

I hereby certify that the following described fat is not capable of being used as food by man, is suitable only for industrial purposes, is not for food purposes, and is of such a character and for such a use that denaturing is impracticable. I further certify that there is now on file with the Secretary of Agriculture a declaration by the establishment in which said fat was prepared, or from which it is offered for shipment in compliance with Section 6 of Regulation 4 of the regulations of the Secretary of Agriculture governing meat inspection.

KIND OF PRODUCT	AMOUNT AND WEIGHT
.....	.....
.....	.....
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(*Signature of Shipper.*)

.....

(*Business or Occupation of Shipper.*)

.....

(*Address of Shipper.*)

The signature of the shipper or of his agent shall be written in full. This certificate shall be separate and apart from any waybill, bill of lading, or other form ordinarily used in the transportation of meat. The duplicate certificate shall be forwarded immediately by the initial carrier to the Chief of the Bureau of Animal Industry, Washington, D. C.

As evidence to connecting carriers that the proper shipper's certificate is on file with the initial carrier, the waybills, transfer slips, running slips, or conductor's cards accompanying such shipments shall have embodied therein, stamped thereon, or attached thereto a signed statement in the following form:

"NAME OF TRANSPORTATION COMPANY.

Inedible and suitable only for industrial purposes, as evidenced by shipper's certificate on file with initial carrier.

(Signed) ....., Agent.

The signature of the agent shall be written in full."

was reasonable and within the scope of the Meat Inspection Act, and in not holding that said Regulation was unreasonable, beyond the power of the Secretary of Agriculture to make, and invalid.

EIGHTH. The Court below erred in not holding and deciding that the evidence showed that the appellant purchased its fats from farmers, retail butchers and retail dealers in meat and meat food products, supplying their customers, and that the appellant, as purchaser from them, was entitled to offer for trans-

portation in interstate or foreign commerce its oils manufactured from such fats, provided it did not sell or offer for sale or transportation, in interstate or foreign commerce, any meat or meat food products which were diseased, unsound, unhealthful, unwholesome, or otherwise unfit for human food, knowing that such meat products were intended for human consumption.

NINTH. The Court below erred in holding and deciding that the oil which the appellant shipped or offered for shipment in interstate or foreign commerce was oleo oil, and not tallow oil.

TENTH. The Court below erred in not holding and deciding that the oils manufactured by the appellant, and sold and shipped, or offered for shipment in interstate or foreign commerce, intended for industrial uses, are not subject to the Meat Inspection Act.

ELEVENTH. The Court below erred in not holding and deciding that the Act of Congress of June 30, 1906, entitled, "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1907," approved June 30, 1906, and commonly known as the "Meat Inspection Amendment," is null and void for, among others, the following reasons: (a) the act is beyond the power of Congress to enact, (b) the system of inspection thereby provided does not relate to or concern interstate commerce, (c) the act is in violation of the Fifth Amendment of the Constitution of the United States.

Brief of Argument.

This case involves the construction of the Meat Inspection Acts of 1906, 1907, 34 Stat. at Large, 674 and 1260.

Appellant's contentions are (a) That neither its plant nor its product is within the scope of these Acts, as it did not manufacture, sell or transport tallow or oleo oil, as a food, for human consumption, but sold its entire product either to dealers in oils or greases, or to manufacturers of soap, steel companies and similar concerns. (b) As it purchased the fats from which it manufactured the oil offered by it for transportation in interstate commerce, from retail butchers and dealers expressly excluded from the provisions of the Act of Congress, and from inspected wholesalers, and sold these oils as inedible, for industrial purposes, and not as food, it had a right to offer these oils for transportation in interstate commerce, without interference from the Department of Agriculture, so long as the oils were not unwholesome and unhealthful. (c) The tallow oil which appellant manufactured and offered for transportation, was not a meat or meat food product within the meaning of the Acts of Congress, and the Secretary of Agriculture had no right to require the appellant to certify that it was not capable of being eaten by man. (d) These Acts of Congress do not contain a prohibition against offering oils and greases not actually or ordinarily used as food or intended for human consumption, in interstate and foreign commerce.

The District Court of the United States held that the oils offered for shipment were not a meat food product within the meaning of the Acts of Congress. The United States Circuit Court of Appeals held that they were.

We will discuss each question separately.

NEITHER APPELLANT'S PLANT, NOR ITS PRODUCT, NOR ITS BUSINESS, WAS WITHIN THE ACT OF JUNE 30, 1906, 34 STAT. AT LARGE, 674, AND MARCH 4, 1907, 34 STAT. AT LARGE, 1260.

Appellant and its predecessors had been engaged in the business of the manufacture of tallow oils and similar products in Pittsburgh and vicinity for more than seventy-eight years. In 1881 it began to manufacture oleomargarine and continued to do so for five or six years, and until the Legislature of Pennsylvania passed an Act prohibiting the manufacture of that product. It then stopped manufacturing oleomargarine and thereafter operated its plant in the production of tallow oils, stearine, greases, tallow, cracklings and stock, without change of machinery and equipment. It did not sell its oils to any manufacturer or dealer in oleomargarine, or food stuffs, but sold its products to soap and other manufacturers, such as Fairbanks & Company, W. & H. Walker, Hasley & Company, Fels & Company, Colgate & Company, Swift & Company and others, and to railroad companies, oil companies, steel companies, the Westinghouse Air Brake Com-

pany, and to dealers in oils and greases. It complied always with the rules of the Department of Agriculture and stamped each container with the true name of its product ("Tallow Oil"), and stenciled on both ends of each contained the word "Inedible." Foreign customers determined for themselves to what use these oils were to be applied, and of the use to which they were actually applied, appellant had no knowledge. There was not a scintilla of evidence that appellant ever sold or shipped its oil to any manufacturer or dealer in oleomargarine or food stuffs. The complaint of the Bureau of Animal Industry was that the oils were so pure that they *might* be used by a purchaser in Holland, or other foreign country, in the manufacture of oleomargarine, and not that they were so used.

The appellant did no slaughtering. It bought its fats from retail butchers and dealers and from inspected establishments.

The Act of Congress applies solely to meat and meat food products intended for human consumption, and not to oils intended for industrial purposes. The Act declared the purpose for which it was passed—to prevent the use in *interstate or foreign commerce of meat or meat food products which are unsound, unhealthful, unwholesome, or otherwise unfit for human food.* In order to carry the Act into effect the Secretary of Agriculture was directed to cause examinations and inspections by Inspectors to be made of "carcasses or parts thereof to be prepared for human consumption at any slaughtering, meat-canning, salting, packing, rendering or similar establishment in any State, Territory, or the District of Columbia for transportation

or sale as articles of interstate or foreign commerce." The Act provides that "all carcasses or parts thereof of such animals found to be unsound, unhealthful, unwholesome or *otherwise unfit for human food* shall be marked, stamped, tagged or labelled "inspected and condemned." It authorizes the inspectors to reinspect carcasses or parts thereof to determine whether since the first inspection the same has become unsound, unhealthful, unwholesome, *or in any way unfit for human food*, and if upon such re-examination, the carcasses or parts thereof, should be found to be unsound, unhealthful, unwholesome, or *in any way unfit for human food,* they were to be destroyed for *food purposes* at the establishment, in the presence of the Inspector. The clear purpose of the Act of Congress is to prohibit the sale or offering for transportation in interstate or foreign commerce, of *meat food products* which are unsound or unfit for human food. The Act was intended to apply only to establishments which prepare *meat or meat food products* for *human consumption*, and was not intended to apply to any establishment which prepared and sold exclusively oils intended for industrial purposes.

The Secretary of Agriculture adopted regulations for meat inspection which became effective April 1, 1908, and defined therein the words "meat food products" in Regulation 3 as follows:

> "SECTION 8. MEAT FOOD PRODUCTS — PARAGRAPH 1. A meat food product, within the meaning of the meat inspection act and of these regulations, is considered to be any article of food in-

tended for human use which is derived or prepared in whole or in part from any edible portion of the carcass of cattle, sheep, swine, or goats, if the said edible portion so used is a considerable and definite portion of the finished food."

"PARAGRAPH 2. MIXTURE—A mixture of which meat is an ingredient will not be considered a meat food product unless the meat contained therein is a definite and considerable portion of the said mixture. But where such mixture is prepared in a part of an official establishment, the sanitation of that part of the establishment will be supervised by the Department, and the meat or meat food product will be inspected before it enters the same mixture. The mixture shall not bear the meat-inspection legend or any simulation thereof. If any reference is made to Federal inspection it shall be in the following form: 'The meat contained herein has been inspected and passed at an establishment where Federal inspection is maintained.' Mixtures such as mincemeat, soups, etc., which come under this description and which are not officially labelled, are allowed in interstate and foreign commerce, without further inspection, and without certificates, subject to the provisions and requirements of the Food and Drugs Act of June 30, 1906, and the regulations made thereunder."

"SECTION 9. MEDICAL MEAT PRODUCTS—Products such as meat juice, meat extract, etc., which are intended only for medicinal purposes and are advertised only to the medical profession, are not considered meat food products within the meaning of this order."

The Attorney General of the United States, in an opinion addressed to the Secretary of Agriculture rendered July 22, 1910, and reported in Opinions of the Attorney General, Vol. 28, page 369, at page 377 says:

> "An examination of authorities fails to disclose any case wherein an attempt has been made to define what a 'meat food product' is, or, in fact, the meaning of the word 'product' when used in a similar connection, and while the provisions of the act indicate that it is not to be construed in a restricted sense, yet it is not there defined with any degree of accuracy."
>
> * * * * * * *
>
> "In view of these authorities, I am constrained to hold that the definition of a meat food product, as given by the Secretary of Agriculture in Regulation 3, section 8, to wit:
>
> > 'A meat food product, within the meaning of the meat-inspection act and of these regulations, is considered to be any article of food *intended for human use* which is derived or prepared in whole or in part from any edible portion of the carcass of cattle, sheep, swine, or goats, if the said edible portion so used is a considerable and definite portion of the finished food,'
>
> is a valid one, and that it is a question of fact for the Secretary to determine whether or not the lard substitute in question is a meat food product within the meaning of this regulation, and whether it and the establishments in which it is manufactured are subject to inspection."

The Attorney General said at page 370 it was true that:

> "if the statute, taken as a whole, must be so construed as not to include these plants and the products thereof, then any regulation made by the Secretary of Agriculture which does include them would be unauthorized and void, notwithstanding the last clause of the Nineteenth paragraph of the Act, which provides:
>
> > 'And said Secretary of Agriculture shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this act, and all inspections and examinations made under this act shall be such and made in such manner as described in the rules and regulations prescribed by said Secretary of Agriculture not inconsistent with the provisions of this act.'
>
> This provision does not, of course, undertake to authorize the Secretary of Agriculture to exercise any powers which are not, by express language or by implication, vested in him by the terms of the statute."

The Department of Agriculture, Bureau of Animal Industry, followed the definition as contained in the regulations effective *April 1, 1908,* until *July 30, 1914,* a period of more than six years when it adopted a new definition, which became effective November 1, 1914, which reads, Regulation 1, Section 1 of the regulations

governing Meat Inspection of the United States Department of Agriculture, page 7, as follows:

> "PARAGRAPH 21. MEAT FOOD PRODUCT: Any article of food, or any article which enters into the composition of food for human consumption, which is derived or prepared, in whole or in part, from any portion of the carcass of any cattle, sheep, swine, or goat, if such portion is all or a considerable and definite portion of the article, except such articles as organo-therapeutic substances, meat-juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession.'

Paragraph 22 of the same regulations reads as follows:

> "MEAT AND PRODUCTS: Carcasses, part of carcasses, meat, products, food products of, or derived from, cattle, sheep, swine and goats, which are capable of being used as food by man."

Paragraph 23 reads:

> "MEAT OR MEAT PRODUCT: Any part or all of meat and products."

It will be noted that the Secretary of Agriculture has included under this definition all meat and all products thereof "which are *capable* of being used as food by man," but he has not eliminated the declaration that the meat and its products must *be intended for human consumption.* According to the interpretation which the Secretary of Agriculture placed upon

the regulations effective April 1, 1908, an establishment which did not produce a meat product *intended for human use* was not subject to inspection and its product was not a meat food product. He, however, recognized that there existed establishments which produced greases or tallow, or other inedible articles derived from cattle, sheep, swine and goats, suitable for industrial uses, and that it might be impracticable to denature the same. In order, therefore, to prevent uninspected establishments from manufacturing, shipping and transporting, in interstate or foreign commerce oils under the name of inedible oil or grease, but intended for human consumption, he adopted in 1908 the following regulations:

> "Paragraph 6, Sec. 19, Reg. 25: When inedible grease, tallow, or other fat for industrial use is of such a nature or intended for such an industrial use that it is impracticable to denature the same or that denaturing will make it impossible to put the product to the desired industrial use, such inedible grease, tallow or other fat may be shipped from one State or Territory or the District of Columbia to another State or Territory, or the District of Columbia, or to a foreign country, without denaturing if the outside container of the said inedible grease, tallow, or other fat be marked as follows: The end of the containers shall be painted white and conspicuously stenciled or burned with the true name of the product and the word 'INEDIBLE.'
>
> No such shipment shall be accepted by any carrier unless and until the shipper shall certify in writing that the said inedible grease, tallow or

other fat is of such a character or is intended for such use that denaturing is impossible or will render said inedible grease, tallow or other fat unavailable for the desired industrial use.

The shipper's certificate shall be in the following form:

(Date)..... 19.....

INEDIBLE FAT.

Name of common carrier.....
Consignor, ...
Point of shipment.....
Consignee .....
Destination .....

I hereby certify that the following described fat is inedible and it not intended for food purposes, and that the said fat is of such a character or is intended for such a use that denaturing is impossible or will render said fat unavailable for the desired industrial use.

KIND OF PRODUCT	AMOUNT AND WEIGHT
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.....
(*Signature of Shipper.*)

.....
(*Business or Occupation of Shipper.*)

.....
(*Address of Shipper.*)

As evidence to connecting carriers that the proper shipper's certificate is on file with the ini-

tial carrier, the waybills, transfer bills, running slips, or conductors' cards accompanying such shipments, must have embodied in, stamped upon, or attached to the same a signed statement in the following form:

(Name of carrier).....

Inedible and not intended for food purposes as evidenced by shipper's certificate on file with the initial carrier.

Signed.....Agent."

These regulations were reasonable and appellant complied with them from 1909 until 1915. The Secretary of Agriculture changed this regulation and adopted in lieu of it Paragraphs 1, 2 and 3 of Section 6 of Regulation 4, effective November 1, 1914, which reads as follows:

"Paragraph 1. The proprietor or operator of each grease rendering or grease refining establishment, and of every other establishment which has not been granted inspection or exemption, which prepares or ships any article or articles derived wholly or in part from cattle, sheep, swine or goats for interstate or foreign commerce, or in the District of Columbia, a Territory, or other place under the jurisdiction of the United States, which article or articles it is claimed are not capable of being used as food by man, shall file with the Secretary of Agriculture a declaration that none of such articles are for human consumption, nor will be sold or shipped from such establishment otherwise than in compliance with these regulations,

and that no article for human consumption derived wholly or in part from cattle, sheep, swine or goats, will be prepared at or in such establishment, or will be sold or shipped therefrom. Such establishments may be inspected at any time to ascertain whether any article derived wholly or in part from cattle, sheep, swine or goats is prepared therein for human consumption, or whether any declaration filed or offered for filing is false in any particular.

Paragraph 2. The proprietor or operator of each establishment which has been granted inspection or exemption and which prepares therein any article or articles derived wholly or in part from cattle, sheep, swine or goats for interstate or foreign commerce, or in the District of Columbia, a Territory, or other place under the jurisdiction of the United States, which article or articles it is claimed are not capable of being used as food by man, shall file with the Secretary of Agriculture a declaration that none of such articles are for human consumption nor will be sold or shipped from such establishment otherwise than in compliance with these regulations.

Paragraph 3. The Secretary of Agriculture may refuse to file, or if previously filed, may withdraw from his files and cancel, any declaration which is false in any particular or the terms of which are violated in any respect."

Section 12 of Regulation 25 reads as follows:

"When inedible grease or tallow or other inedible article derived wholly or in part from cat-

tle, sheep, swine or goats, suitable only for industrial use, is of such a nature or for such an industrial use that it is impracticable to denature the same, such product may be transported from one State or Territory or the District of Columbia to or through another State or Territory or the District of Columbia, or to any place under the jurisdiction of the United States, or to a foreign country, without denaturing, if both ends of the containers are painted white and conspicuously stenciled or burned with the true name of the product and the word 'inedible' in letters not less than two inches high, and the other provisions of this section are complied with. The carrier shall require, and the shipper shall make and deliver to the carrier, a certificate in duplicate in the following form:

Date.....191 .

INEDIBLE FAT.

Name of carrier.....,
Consignor .....
Point of Shipment.....
Consignee .....
Destination .....

I hereby certify that the following described fat is not capable of being used as food by man, is suitable only for industrial purposes, is not for food purposes, and is of such a character or for such a use that denaturing is impracticable. I further certify that there is now on file with the Secretary of Agriculture a declaration by the establishment in which said fat was prepared, or

from which it was offered for shipment, in compliance with Section 6 of Regulation 4 of the Regulations of the Secretary of Agriculture governing meat inspection.

KIND OF PRODUCT	AMOUNT AND WEIGHT
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(*Signature of Shipper.*)

.....

(*Business or Occupation of Shipper.*)

.....

(*Address of Shipper.*)

The signature of the shipper or of his agent shall be written in full. This certificate shall be separate and apart from any waybill, bill of lading, or other form ordinarily used in the transportation of meat. The duplicate certificate shall be forwarded immediately by the initial carrier to the Chief of the Bureau of Animal Industry, Washington, D. C."

These regulations are unreasonable. The Secretary of Agriculture had no right to require the appellant to certify that its product was not *capable* of being used as food by man. He had no right to extend the meaning of the words "meat" and "meat food products" beyond the interpretation ordinarily given them, and the one upon which he had acted from 1908 until November 1, 1914.

The great and underlying principle of the legislation is the protection of the people of the United States against the sale and shipment to them of meats and meat food products which are unwholesome, unsound and unfit for human food. The Secretary of Agriculture construed the words "meat" and "meat food products" in their broadest sense, without respect to the uses to which the articles were to be put. Congress did not intend that such a broad construction should be given the Act. The legislation relates wholly to meats and meat food products for human consumption. You cannot separate the words "meat" and "meat food products" from the purpose for which they are to be used.

In *Commonwealth vs. Schollenberger*, 153 Pa., 625, a dealer sold a package containing twenty pounds of oleomargarine, manufactured in Rhode Island, which was imported into Pennsylvania and sold and delivered to the purchaser in its original unbroken condition. It did not appear that the oleomargarine was sold as an article of food. The Court said:

> "The law is a highly penal one, therefore, to be construed as all penal laws, strictly. The first section enacts 'that no person, firm or corporate body shall manufacture out of any oleaginous substance or any compound of the same, other than that produced from unadulterated milk or of cream from the same, any article designed to take the place

of butter or cheese produced from pure unadulterated milk or cream from the same, or of any imitation, or adulterated butter or cheese, or shall sell or offer for sale, or have in his, her or their possession, with intent to sell the same as an article of food.

The offense, therefore, it will be perceived, is confined to the manufacture and sale of oleomargarine 'as an article of food,' the whole purpose of the law being, as appears by its title and this section, to protect the health of the public. If, then, it was sold and used as wagon grease, to which purpose its enemies consider it eminently fitted, it would clearly not be a violation of the law. Now, there is nothing in the case stated to show that it was sold or used as an article of food. As therefore, no law of the State would seem to have been violated, we give judgment for the defendant on the case stated.

The 3rd section, although not reiterating the exact words of the first, must be read in connection with it; the intent to sell, or the offer to sell, must be as an article of food."

THE SECRETARY OF AGRICULTURE CANNOT ALTER, AMEND, EXTEND OR MODIFY THE ACT OF CONGRESS.

In *Morrill vs. Jones*, 106 U. S., 466, it was held that:

> "The Secretary of the Treasury cannot by his regulations alter or amend the revenue law. All he can do is to regulate the mode of proceeding to carry into effect what Congress has enacted."
>
> Accordingly it was held in that case, under Section 2505 of the Revised Statutes, which provide that live animals specially imported for breeding purposes from beyond the seas should be admitted free of duty, upon proof satisfactory to the Secretary of the Treasury under such regulations as he may prescribe, that the Secretary of the Treasury had no authority to prescribe regulations requiring that before admitting the animals free, the Collector should be satisfied that they were of superior stock, adapted to improving the breed in the United States.

In *United States vs. 11,150 lbs. of Butter,* 195 Fed. Rep., 657, the United States Circuit Court of Appeals for the Eighth Circuit held that a regulation of the Secretary of the Treasury, to the effect that butter containing sixteen per cent or more of moisture contains an abnormal quantity and therefore must be classed as

adulterated butter under the clause of the Act of Congress, was void, because, 'while the Secretary and his subordinates had authority to investigate each case and to decide, for the administration purposes in the light of the facts and circumstances of the particular case, whether or not the butter involved therein was adulterated butter and taxable as such, they had neither express nor implied authority by a general regulation to give an authoritative and final definition of the terms, or such a construction of the statute, which should govern all future cases.' (Syllabus.) Judge Sanborn rendered the opinion in that case. He said (p. 663):

> "Implied authority in an executive officer or department, to repeal, extend or modify an Act of Congress, may not be lawfully inferred from authority to enforce it, and a regulation of the Secretary of the Treasury, or any other executive officer, made under legislative authority to make rules to enforce an Act of Congress, which has the effect to subject classes of property to forfeiture and classes of persons to fines and penalties under the Act, that are excluded therefrom by the terms of the law, is unauthorized and void. * * *
>
> The definition of offenses, the classification of offenders, and the prescription of the punishment they shall suffer, are legislative, and neither an executive or judicial function. And forfeitures, fines and penalties may not be prescribed, imposed or inflicted for violation of a regulation of an executive department, without previous legislative prescription."

In *St. Louis Independent Packing Co. vs. Houston,* 215 Fed. Rep., 553, it was held by the United States Circuit Court of Appeals for the Eighth Circuit (Syllabus):

"It was not the intention of Congress by the enactment of the Meat Inspection Act of March 4, 1907, C. 2907-34, Stat. 1260 (U. S. Comp. St. Supp. 1911, p. 1361), to provide standards of quality, except to prohibit the sale of food which is unsound, unwholesome, or otherwise unfit for human food, and to secure true branding, and the Secretary of Agriculture had no power to adopt and enforce Section 16 of Regulation 18, promulgated thereunder, which was added February 28, 1913, and provides that 'sausage shall not contain cereal in excess of two per cent.,' and that water or ice shall not be added to sausage in excess of three per cent., if it be construed, as contended by the department, to prohibit the addition of cereal or water to a greater per cent., even though their presence is stated on the label, it being shown that both cereal and water have been used in greater per cent. in the making of sausage for many years, and do not render it deleterious to health."

Judge Smith said, at page 559:

"The Act of Congress did contemplate, however, that a purchaser should know what he was buying." * * * and at page 561:

"The question is simply: Could he prohibit the making of a compound which was sound, healthful, wholesome and free from dyes, chemicals, pre-

servatives, or ingredients which render such unfit for human food by a mere regulation? We are constrained to say that he cannot. A compound of beef and pork would not entitle the Secretary of Agriculture to prohibit the words 'beef' and 'pork' to appear in the title and to condemn all such compounds on the label of which they appear."

There is nothing in the Act which gives the Secretary of Agriculture power over inedible grease intended for industrial purposes and not for food. There was no evidence in this case that appellant was guilty of an attempted evasion of the Act. Appellant contends that the alleged regulation with respect to its product is unauthorized by the Act, is the exercise of legislative power and authority by the Secretary of Agriculture, and therefore void. The Act does not give the Secretary of Agriculture any power whatever to find what shall constitute a meat or meat food product. It gives him power to make such rules and regulations as are necessary for the efficient execution of the Act, but gives him no power to add any provision thereto or take off any part thereof. The meaning of the words "meat" or "meat food product," as used in the Act, is clear. They contemplate food for human consumption. The Secretary of Agriculture may adopt such regulations not inconsistent with the law, as are necessary to carry out the purposes of the Act, but such regulations must be within it clear purview. It is not within his province to round out legislation according to his own notions, however desirable he may deem it. The regulation must prescribe merely the method of carrying the act into effect and the execution of the details necessary

to give it life and force. Congress cannot delegate legislative authority to an executive officer or board of officers, and did not intend to do so.

In the case of the *United States vs. Eaton,* 144 U. S., 677, Mr. Justice Blatchford said, at page 687:

> "Much more does this principle apply to a case where it is sought substantially to prescribe a criminal offense by the regulation of a department. It is a principle of criminal law that an offense which may be the subject of criminal procedure is an act committed or omitted 'in violation of a public law, either forbidding or commanding it.' *4th Am. & Eng. Enc. Law,* 642; 4 Bl. Com., 5. It would be a very dangerous principle to hold that a thing prescribed by the Commissioner of Internal Revenue, as a needful regulation under the Oleomargarine Act, for carrying it into effect, could be considered as a thing 'required by law' in the carrying on or conducting of the business of a wholesale dealer in oleomargarine, in such manner as to become a criminal offense punishable under § 18 of the Act; particularly when the same Act, in § 5, requires a manufacturer of the article to keep such books and render such returns as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulation, require, and does not impose, in that section or elsewhere in the Act, the duty of keeping such books and rendering such returns upon a wholesale dealer in the article.
>
> It is necessary that a sufficient statutory authority should exist for declaring any Act or omis-

sion a criminal offense; and we do not think that the statutory authority in the present case is sufficient. If Congress intended to make it an offense for wholesale dealers in oleomargarine to omit to keep books and render returns as required by regulations to be made by the Commissioner of Internal Revenue, it would have done so distinctly, in connection with an enactment such as that above recited, made in § 41 of the Act of October 1, 1890.

Regulations prescribed by the President and by the heads of departments, under authority granted by Congress, may be regulations prescribed by law, so as lawfully to support acts done under them and in accordance with them, and may thus have, in a proper sense, the force of law; but it does not follow that a thing required by them is a thing so required by law as to make the neglect to do the thing a criminal offense in a citizen, where a statute does not distinctly make the neglect in question a criminal offense."

In the case of the *United States vs. United Verde Copper Co.,* 196 U. S., 207, Mr. Justice McKenna rendered the opinion of the Court. In this case, Congress had passed an Act, authorizing the use of timber taken from unsurveyed mineral lands in the Territory of Arizona, for building, agricultural, mining, and other domestic purposes, but the Secretary of the Interior adopted a regulation, under the supposed authority of the statute, that no timber could be used for smelting purposes, and insisted that the Act gave him such authority because it used the words: "Subject to such

rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes." The Court said, at page 215:

> "If Rule 7 is valid, the Secretary of the Interior has power to abridge or enlarge the statute at will. If he can define one term, he can another. If he can abridge, he can enlarge. Such power is not regulation; it is legislation. The power of legislation was certainly not intended to be conferred upon the Secretary. Congress has selected the industries to which its license is given, and has entrusted to the Secretary the power to regulate the exercise of the license, not to take it away. There is, undoubtedly, ambiguity in the words expressing that power, but the ambiguity should not be resolved to take from the industries designated by Congress the license given to them, or invest the Secretary of the Interior with the power of legislation."

In *St. Louis Merchants' Bridge Terminal Ry. Co. vs. United States,* 188 Fed. Rep., 191, Circuit Judge Sanborn held: That a legislative body may delegate to an executive or administrative officer the power to find some fact or situation on which the operation of a law is conditioned, or to make and enforce regulations for the execution of a statute according to its terms; but it could not delegate its law-making power, its power to exercise the indispensable discretion to make,

add to, to take from, or to modify a statute. He says, at page 195, quoting from Judge Ranney, in the Supreme Court of Ohio:

> " 'The true distinction,' said Judge Ranney for the Supreme Court of Ohio in *Cincinnati, Wilmington & Zanesville R. R. Co. vs. Commissioners,* 1 Ohio St., 77, 88, in a declaration which has been repeatedly approved by the Supreme Court, 'is between the delegation of power to make a law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done. To the latter, no valid objection can be made.' "

In this case the St. Louis Merchants' Bridge Terminal Ry. Company complained that it had been convicted and fined for failure to placard the cars and stamp the waybills of certain shipments of cattle and sheep which had been received by previous carriers in quarantined districts in Texas, without certificates of inspection and had been transported to St. Louis by previous carriers, where they were delivered to it and whence they were carried by it to the national stockyards in Illinois. The ground of its complaint was that its receipt of the cattle and sheep and its failure to placard the cars and stamp the waybills constituted no violation of any law of the United States.

> "By Section 1, the Secretary of Agriculture is authorized to quarantine any district when he finds that livestock therein are affected with any

contagious or infectious disease, and is directed to give notice of his action

> 'to the proper officers of railroad, steamboat or other transportation companies,' etc.

Sec. 2 provides:

> 'That no railroad company * * * shall receive for transportation or transport from any quarantined state * * * or from the quarantined portion of any state * * * into any other state * * * any cattle or other livestock, except as hereinafter provided.'

Sec. 3 empowers the Secretary of Agriculture to make regulations to—

> 'govern the inspection, disinfection, certification, treatment, handling and method and manner of delivery and shipment of cattle or other livestock from a quarantined state * * * and from the quarantined portion of a state * * * into any other state. * * *.'

Sec. 4 declares that livestock—

> 'may be moved from a quarantined state * * * or from the quarantined portion of a state * * * into any other state * * * under and in compliance with the rules and regulations of the Secretary of Agriculture made and promulgated in pursuance of the provisions of section 3 of this act; but it shall be unlawful to move, or allow to be moved, any cattle or other livestock from any quarantined

> state * * * or from the quarantined portion of any state * * * into any other state * * * in manner or method or under conditions other than those prescribed by the Secretary of Agriculture."

Sec. 6 provides that any person, company or corporation—

> 'violating the provisions of sections 2 or 4' shall be punished by fine or imprisonment, or both."

The Court said in that case (at page 193):

"A penal statute which creates and denounces a new offense, and the Act under consideration is such a statute, should be strictly construed. A man ought not to be punished unless he falls plainly within the class of persons specified as punishable by such a law. The definition of offenses and the classification of offenders are legislative and not judicial functions, and where, as in the case at bar, a penal statute is plain and unambiguous, the courts may not lawfully extend it to a class of persons who are excluded from its effect by its terms, nor by interpollation or construction after their commission make acts offenses which were not clearly such by the expressed will of the legislative department.'

IF THE MEANING OF THE WORDS, "MEAT" AND "MEAT FOOD PRODUCTS," AS USED IN THE ACT OF CONGRESS, IS DOUBTFUL, CERTAINLY THE CONSTRUCTION WHICH THE SECRETARY OF AGRICULTURE GAVE THESE WORDS FOR A PERIOD OF MORE THAN SIX YEARS, OUGHT TO HAVE GREAT IF NOT CONTROLLING WEIGHT.

In *Fairbank vs. United States,* 181 U. S., 283, Mr. Justice Brewer said (at page 307):

> "An examination of the opinions * * * will disclose that they may be grouped in three classes: First, those in which the court, after seeking to demonstrate the validity or the true construction of the statute, has added that, if there were doubt in reference thereto, the practical construction placed by Congress or the Department charged with the execution of the statute was sufficient to remove the doubt; second, those in which the court has either stated or assumed that the question is doubtful and has rested its determination upon the fact of a long-continued construction by officials charged with the execution of the statute; and, third, those in which the court, noticing the fact of a long-continued construction, has distinctly affirmed that such construction cannot control

where there is no doubt as to the true meaning of the statute. * * *" At page 311 he said further:

"From this resume of our opinions, it clearly appears that the practical construction is relied upon only in cases of doubt. We have referred to it when the construction seemed to be demonstrable, but then only in response to doubts suggested by counsel. Where there was obviously a matter of doubt, we have yielded assent to the construction placed by those having actual charge of the execution of the statute, but where there was no doubt we have steadfastly declined to recognize any force in practical construction. Thus, before any appeal can be made to practical construction, it must appear that the true meaning is doubtful."

To the same effect are:

Wisconsin Central Railroad Co. vs. The United States, 164 U. S., 190.

St. Paul, etc., vs. Phelps, 137 U. S., 528.

Webster vs. Luther, 163 U. S., 331.

Schell's Executors vs. Fauche', 138 U. S., 562.

United States vs. Finnell, 185 U. S., 236.

WAS APPELLANT'S PRODUCT, WHICH IT OFFERED FOR SHIPMENT IN INTERSTATE COMMERCE, TALLOW OIL OR OLEO OIL?

The District Court of the United States held that it was tallow oil. The United States Circuit Court of Appeals held that it was oleo oil. We contend that the conclusion reached by the District Court was correct, and that reached by the United States Circuit Court of Appeals was incorrect.

The testimony shows that there is no chemical difference between oleo oil and tallow oil. (Rec. Test. 82.) Oleo oil *is obtained from the caul, ruffle and heart fats* of the animal, because these fats produce a more agreeable flavor and odor. (Rec. Test. 76, 85, 86.) Tallow oil is produced from fats which will *not produce* oleo oil. (Rec. Test. 76, 86.) Oleo oil can be used for any purpose for which tallow oil can be used. (Rec. Test. 57).

The principal witnesses called by appellee were men employed by Armour & Company, Swift & Company, and other similar companies, and they testified largely as to the methods of manufacture used in their own plants, and possessed very little outside knowledge. (Rec. Test. 76.)

Paul Rudnick said that Armour & Company used different methods in the manufacture of oleo oil and tallow oil. They made oleo oil by washing the fat of

the cattle as quickly as possible and then chilling it, taking it from the abbattoir to the oleo department, hashing and rendering it in open kettles at about 150 degrees Fahrenheit; the fat then settled; they then clarified it by the use of salt and transfered it to containers, in which it was allowed to crystallize or seed; the mass was then placed in a press and the oil which flowed from the press constituted oleo oil and the fat which remained behind constituted oleo stearine. (Rec. Test. 70.) Tallow oil was made by pressing tallow which had been rendered from beef fat in pressure tanks with steam under pressure, and the tallow was allowed to crystallize or grain in a manner somewhat similar to that of oleo oil, the oil running out constituting tallow oil and the harder fat remaining behind in the press cloth was known as tallow stearine. (Rec. Test. 70.)

If the entire fats of the animal were rendered, he would be unable to tell whether the product was tallow oil or oleo oil. (Rec. Test. 76, 77.)

It will be observed from the testimony that the essential difference between oleo and tallow oils consists in the fats used, oleo oil being produced from the caul, ruffle and heart fats, because of the better flavor, and tallow oil being produced from the entire fats of the animal. The United States Circuit Court of Appeals, however, thought that as appellant's oil was produced by the same machinery which it had formerly used in the manufacture of oleomargarine, it, therefore, was oleo oil. There was no good reason why appellant should abandon its old machinery, simply because it ceased to manufacture oleomargarine and purchase

other equipment for the manufacture of tallow oil of an inferior quality. There was no evidence that one process was better than another in the elimination of germs. Appellant sold its product at tallow oil prices.

APPELLANT RENDERED ITS OILS FROM FATS PURCHASED FROM RETAIL BUTCHERS AND DEALERS (NOT SUBJECT TO THE ACT), AND FROM INSPECTED WHOLESALERS, AND IT HAD THE RIGHT TO OFFER THEM IN INTERSTATE AND FOREIGN COMMERCE IF THEY WERE NOT UNHEALTHFUL OR UNWHOLESOME, AND EVEN THEN, IF THEY WERE INTENDED FOR INDUSTRIAL AND NOT FOR FOOD PURPOSES.

Mr. Hay Walker, Jr., testified on behalf of the appellant, as follows:

"A. We procure it from butchers, retail and wholesale butchers, mostly retail. We have wagons going around from shop to shop gathering it.

Q. That is, you obtain it from the retail butchers of Western Pennsylvania?

A. Yes, sir.

Q. From men who slaughter their own cattle?

A. Some who slaughter their own cattle.

Q. What other retail butchers do you obtain this from?

A. The butchers that buy their cattle from the wholesalers, buy their meat already slaughtered from the wholesalers.

Q. Who are the wholesalers?
A. The Pittsburgh Provision Company, Dunlevy & Brothers Packing Company, and Zoller. Then there is Armour and Swift, and all Western packers.
Q. Those wholesalers are government inspected plants, are they?
A. Those I mentioned are.
Q. And you get some from the wholesalers, do you?
A. We get some from butchers who buy their cattle and kill it themselves, without inspection.
Q. And you also buy it from wholesalers directly?
A. Yes, some.
Q. Do you buy any fat from wholesalers outside of the City of Pittsburgh?
A. No."
(Rec. Test., 30.)

The twenty-first Section of the Act reads:

"(21) That the provisions of this Act requiring inspection to be made by the Secretary of Agriculture shall not apply to animals slaughtered by any farmer on the farm and sold and transported as interstate or foreign commerce, nor to retail butchers and retail dealers in meat and meat food products, supplying their customers: *Provided,* That if any person shall sell or offer for sale or transportation for interstate or foreign commerce any meat or meat food products which are diseased, unsound, unhealthful, unwholesome, or otherwise unfit for human food, knowing that such

meat food products are intended for human consumption, he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment: *Provided, also,* That the Secretary of Agriculture is authorized to maintain the inspection in this Act provided for at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, notwithstanding this exception, and that the persons operating the same may be retail butchers and retail dealers or farmers; and where the Secretary of Agriculture shall establish such inspection, then the provisions of this Act shall apply notwithstanding this exception."

The retail butcher carries on his business as though the Act had never been passed, and we cannot see why the person who purchases fats from him should not be entitled to the same exemption. The Secretary of Agriculture may elect at any time to impose inspection either on the retail dealer or retail butcher, but until he does so elect, neither the retail butcher or retailer nor his product are within the provisions of the Act.

On May 10, 1909, the Inspector of the Bureau of Animal Industry notified the appellant that it would not be permitted to use in the manufacture of its tallow oil fats obtained from retail butchers and dealers who slaughtered their own cattle, and that if it desired to ship oils in interstate commerce, it must buy its fats

from official establishments. The Secretary of Agriculture had no power to prescribe from whom the appellant should buy its fats, and this ruling could only result in depriving the retail butcher from disposing of his fats, and the appellant from carrying on its business. The appellant declined to accede to the demand of the Department, and insisted upon its right to buy fats from retail butchers and dealers. On June 26, 1909, the Department withdrew the inspection. (Rec. 24, 120, 135.) After the withdrawal of the inspection, appellant shipped its product solely as inedible, and so marked and stamped it, in accordance with the rules and regulations governing meat inspection, which became effective April 1, 1908. It continued to make its shipments in this way until July 10, 1910, when the Inspector notified the Baltimore & Ohio Railroad Company not to carry a shipment which appellant had consigned to one of its customers in Rotterdam, Holland. Appellant then filed its bill of complaint in the Circuit Court of the United States for the Western District of Pennsylvania against the Baltimore & Ohio Railroad Company and G. E. Totten, Inspector of the Bureau of Animal Industry of the Department of Agriculture, praying that the Baltimore & Ohio Railroad Company be required to transport appellant's oils and that G. E. Totten be restrained from interfering therewith. Shortly thereafter Totten made an information against appellant and W. H. Womsley, its General Manager, upon which an indictment was obtained charging appellant and Womsley with unlawfully offering to the Baltimore & Ohio Railroad Company a meat food product for transportation from Pittsburgh to Holland. Appellant and Womsley pleaded not guilty, and the case

was tried and a verdict was rendered in appellant's favor. From the date of the rendition of the verdict until January 15, 1915, appellant continued to make shipments of its oils to various persons throughout the United States and Europe, without complaint or interference from the Department, but it always accompanied such shipments with certificates in conformity with the rules and regulations effective April 1, 1908, stating that the oil was not intended for food purposes.

On January 15, 1915, appellant offered to the Baltimore & Ohio Railroad Company another shipment of its oil, and G. E. Totten, the appellee, again notified the Railroad Company not to make the shipment.

It will be observed that from 1909 until January 15, 1915, appellant shipped its oils in interstate and foreign commerce without interference from the Department of Agriculture, except in the one instance to which we have referred, and this tends strongly to show that the Department felt that its right to enforce its position was doubtful.

The Secretary of Agriculture cannot extend the Act of Congress by an executive regulation to embrace the business of a retail butcher, or dealer, when he has not elected to maintain inspection over the establishment of the retail butcher, or dealer. Much less can he extend the Act to cover the business of a person who buys fats from retail butchers and renders them into oils intended for industrial uses, and not prepared for human consumption.

It must be kept in mind that appellant is entirely clear of any charge of fraud or attempted evasion of the Act. It was carrying on an entirely lawful business, and it was stamping and stenciling its product as inedible, certifying that it was intended for industrial uses, and was not deceiving any purchaser. If the purchaser converted the oils into a use for which they were not sold, the appellant was in no way responsible.

NEITHER TALLOW NOR OLEO OIL IS ORDINARILY USED AS A FOOD.

W. H. Womsley testified that neither tallow oil, tallow, stearine or cracklings were used as a food. (Record Test. 42.) Arthur S. Thatcher, a witness called by appellee, testified that neither tallow oil nor oleo oil were used as a common food without undergoing further process of manufacture, and is not a finished product. (Rec. Test., 67.) William H. Irwin, one of appellee's witnesses, testified that neither oleo oil nor tallow oil was used as a common food, distinct from its being used in certain compounds, and was not sold by retail or wholesale grocers as a common food product. (Rec. Test., 84.)

The appellee made an attempt to prove that it was used for shortening purposes, and succeeded in obtaining a few foreigners who testified through interpreters. Their testimony shows that it was used only in isolated cases, and was not generally used.

In *Commonwealth vs. Pflaum*, 236 Pa., 294, at page 296, it is said:

> "That the word 'food' is a very general term, and applies to all that is eaten for the nourishment of the body cannot be questioned. It is so understood generally, and the authorities whose accuracy is relied upon in all departments of investigation concur in that definition. 'Nutritive material absorbed or taken into the body for the purpose of growth or repair, or for the maintenance of the vital processes.'—Webster. 'That which is eaten or drunk for nourishment, ailment; nutriment, in the scientific sense. Any substance that, being taken into the body of an animal or plant, serves, through organic action, to build up normal structure or supply the waste of tissue; nutriment.'—Standard Dictionary. 'Whatever supplies nourishment to organic bodies; aliment; victuals; provisions.'—Century Dictionary."

In *McDermott vs. Wisconsin*, 228 U. S., 115, at page 128, it was said:

> "The Food and Drugs Act was passed by Congress, under its authority to exclude from interstate commerce impure and adulterated food and drugs, and to prevent the facilities of such commerce being used to enable such articles to be transported throughout the country from their place of manufacture to the people who consume and use them, and it is in the light of the purpose and of the power exerted in its passage by Congress that this act must be considered and construed. *Hipolite Egg Co. vs. United States, supra.*"

In *United States vs. Northwestern Fisheries Company,* 224 Fed., 274, speaking of the meat inspection Act, the Court said:

> "A consideration of this act shows that the purpose of the act, reference being had to section 1, is to provide a system of inspection for the purpose of preventing the use in interstate commerce of meat food products unfit for human consumption. The act deals with two classes of people, and likewise with two classes of food. One kind of food is that which is prepared for market in a slaughtering, packing or canning establishment, and the other which is not.
>
> * * * * * * *
>
> A complete system of inspection is provided for all slaughtering, packing, and canning establishments, and penalties provided for the sale or transportation, without inspection, and then provision is made for the other class of meats, which is not within this general provision, and then comes the exception, and that is that it—
>
> > 'shall not apply to animals slaughtered by any farmer on the farm and sold and transported as interstate or foreign commerce, nor to retail butchers and retail dealers in meat or meat food products.' "

DENATURING IS NOT PRACTICABLE AND IS ONLY ADOPTED IN CASES OF FATS TAKEN FROM DISEASED ANIMALS WHICH HAVE BEEN CONDEMNED.

The Bureau of Animal Industry, shortly prior to the trial of this case in the Court below, had adopted the process of applying a denaturing agent to fats not intended for use as food. Paul Rudnick, a witness called on behalf of appellee, testified that this was called power distillate, and consisted of a substance manufactured from crude oil, very similar to kerosene, but heavier, with a higher specific gravity, a more disagreeable taste, not so highly refined and less volatile. (Rec. Test., 71). The Bureau of Animal Industry required that this denaturing agent be applied to fats taken from animals which had either died from, or been killed because of, disease, and had been condemned. (Rec. Test., 77, 82, 106 and 107). A witness called for the appellant testified that denaturing of the oils would injure them and make them less marketable. (Rec. Test., 111, 112). He also testified that he had never heard of this power distillate until the trial of this case. (Rec. Test., 112, 113).

Oils produced from the fats of animals, after they have been denatured, are capable of being eaten without serious injury. Even if the appellant were to denature its product, its officers could not certify that the product was incapable of being used as food by man.

The first use made of petroleum was as a medicine:

"It was sold under the name of Seneca Oil, American Oil, afterwards, as Harlem Oil. About 1849 Mr. Samuel M. Kier of Pittsburgh conceived the idea of putting it in bottles and selling it as a specific for all of the ills to which flesh is heir. He procured a few barrels from his father's salt wells in Allegheny County, and placed upon the bottles the following label or advertisement: 'Kier's Petroleum or Rock Oil, Celebrated for wonderful curative powers. A natural remedy. Procured from a well in Aliegheny four hundred feet below the Earth's surface. Put up and sold by Samuel M. Kier, 363 Liberty Street, Pittsburg, Penn. Price 50 cents.' * * *

At the present day, valuable medicinal products have been made from petroleum, such as filtered paraffine residues, sold under the name of cosmolene, vaseline, petrolene and the like."

Thornton on the Law Relating to Oil and Gas, Sec. 14, pp. 26-27.

The only effect of the rules of the Department requiring the use of this denaturing agent would be to reduce the number of industrial uses to which the oils are applicable. (Rec. Test., 111, 112).

In conclusion, we respectfully submit that the United States Circuit Court of Appeals was in error in reversing the decree of the District Court, because (a) Appellant's product was not a meat food product intended for human consumption and its establishment was not within the meat inspection Act, and the reversal would put the appellant entirely out of business, without accomplishing any purpose of the act, (b) The application of the denaturing agent would render the product neither unhealthful nor unwholesome, but merely reduce the number of industrial uses to which it could be put, and make it less salable for fine soaps, tooth-powders, etc. (c) That it was not oleo oil, as it was manufactured out of the entire fats of the animal, and not out of the caul, ruffle and heart fats, was sold at tallow oil prices, marked tallow oil, inedible, and was intended for industrial uses, and there was no attempt on the part of the Bureau of Animal Industry to show that appellant deceived any one, or sold or intended to sell its tallow oil as a meat food product, for use in the manufacture of oleomargarine, (d) Appellant followed strictly the rules which the Secretary of Agriculture adopted which became effective April 1, 1908, for a period of nearly seven years, until he changed these rules by requiring it to certify to what was absolutely false, (e) Its oils are manufactured from fats purchased from retail butchers and dealers in meats who were not subject to the meat inspection act, and from inspected establishments. It had a right to use these fats and transport them in interstate and foreign commerce, without having its oils stamped "inspected and passed." If they were intended for food purposes, appellant was guilty

only in the event that its oils were "diseased, unsound, unhealthful, unwholesome, or otherwise unfit for human food, knowing that such meat food products were intended for human food." If the oils were intended for industrial purposes, appellant was not guilty in any event, even though it had shipped diseased, unsound and unwholesome oils. Even if it were selling and transporting a meat food product intended for human use, made out of fats bought from retail butchers and dealers exempted from the Act, it was only guilty of a violation of the Act if the Secretary of Agriculture exercised his right to inspect these retailers, or, if he did not do so, if it shipped diseased or unwholesome foods. It was not shipping a meat foot product, but an oil not ordinarily eaten by man, and not intended for human use, but for industrial purposes, and so clearly declared by stenciling and stamping in accordance with the rules and regulations which had been in force for nearly seven years.

The rule of the Secretary of Agriculture requiring the appellant to make a false statement is an arbitrary exercise of power not given to him by the Act of Congress.

SAMUEL MCCLAY,
Attorney for Appellant.

WILLIAM M. ROBINSON,
ALLEN H. KERR,
Of Counsel.

APPENDIX.

APPENDIX.

AN ACT

Making appropriations for the Department of Agriculture for the fiscal year ending June Thirtieth, Nineteen Hundred and Seven. Approved June Thirtieth, Nineteen Hundred and Six—34 Stat. at Large, 674.

(Re-enacted March 4, 1907—34 Stat. at Large, 1260.)

MEAT INSPECTION ACT.

Meat and meat animal inspection.

That for the purpose of preventing the use in interstate or foreign commerce, as hereinafter provided, of meat and meat food products which are unsound, unhealthful, unwholesome, or otherwise unfit for human food, the Secretary of Agriculture, at his discretion, may cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, and goats before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment, in which they are to be slaughtered and the meat and meat food products thereof are to be used in interstate or foreign commerce; and all cattle, swine, sheep, and goats found on such inspection to show

Examination of animals before killing.

Diseased animals to be set apart, etc.

symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, or goats, and when so slaughtered the carcasses of said cattle, sheep, swine, or goats shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Secretary of Agriculture as herein provided for.

Post-mortem examination at packing, etc., houses.

That for the purposes hereinbefore set forth the Secretary of Agriculture shall cause to be made by inspectors appointed for that purpose, as hereinafter provided, a post-mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine and goats to be prepared for human consumption at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in any State, Territory, or the District of Columbia for transportation or sale as articles of interstate or foreign commerce; and the carcasses and parts thereof of all such animals found to be sound, healthful, wholesome, and fit for human food shall be marked, stamped, tagged, or labeled as "Inspected and passed;" and said inspectors shall label, mark, stamp, or tag as "Inspected and condemned," all carcasses and parts thereof of animals found to be unsound, unhealthful, unwholesome, or otherwise unfit for human food; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Secretary of Agriculture may remove in-

Labeling.

Destruction of condemned meats.

spectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become unsound, unhealthful, unwholesome, or in any way unfit for human food, and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be unsound, unhealthful, unwholesome, or otherwise unfit for human food, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Secretary of Agriculture may remove inspectors from any establishment which fails to so destroy any such condemned carcass or part thereof.

Re-inspection, etc.

The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, and goats, or the meat or meat products thereof which may be brought into any slaughtering, meat canning, salting, packing, rendering, or similar establishment, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products which, after having been issued from any slaughtering, meat-canning, salting, packing, rendering, or

Examination before use for food products.

Re-examination on return of goods.

similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained.

Inspectors to be appointed at canning, etc., establishments. Authority.

That for the purposes hereinbefore set forth the Secretary of Agriculture shall cause to be made by inspectors appointed for that purpose an examination and inspection of all meat food products prepared for interstate or foreign commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, and for the purposes of any examination and inspection said inspectors shall have access at all times, by day or night, whether the establishment be operated or not, to every part of said establishment; and said inspectors shall mark, stamp, tag, or label as "Inspected and passed" all such products found to be sound, healthful, and wholesome, and which contain no dyes, chemicals, preservatives, or ingredients which render such meat or meat food products unsound, unhealthful, unwholesome, or unfit for human food; and said inspectors shall label, mark, stamp, or tag as "Inspected and condemned" all such products found unsound, unhealthful, and unwholesome, or which contain dyes, chemicals, preservatives, or ingredients which render such meat or meat food products unsound, unhealthful, unwholesome, or unfit for human food, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the Secretary of Agriculture may remove inspectors from any establishment

Marks of inspection.

Destruction of food unfit for use.

which fails to so destroy such condemned meat food products: Provided, That, subject to the rules and regulations of the Secretary of Agriculture, the provisions hereof in regard to preservatives shall not apply to meat food products for export to any foreign country and which are prepared or packed according to the specifications or directions of the foreign purchaser, when no substance is used in the preparation or packing thereof in conflict with the laws of the foreign country to which said article is to be exported; but if said article shall be in fact sold or offered for sale for domestic use or consumption then this proviso shall not exempt said article from the operation of all the other provisions of this Act.

Proviso. Application to export trade.

Domestic use.

That when any meat or meat food product prepared for interstate or foreign commerce which has been inspected as hereinbefore provided and marked "Inspected and passed" shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this Act is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering under the supervision of an inspector, which label shall state that the contents thereof have been "inspected and passed" under the provisions of this Act; and no inspection and examination of meat or meat food products deposited or enclosed in cans, tins, pots, canvas, or other

Marking of receptacles.

Supervision by inspectors.

receptacle or covering in any establishment where inspection under the provisions of this Act is maintained shall be deemed to be complete until such meat or meat food products have been sealed or enclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector, and no such meat or meat food products shall be sold or offered for sale by any person, firm, or corporation in interstate or foreign commerce under any false or deceptive name; but established trade name or names which are usual to such products and which are not false and deceptive and which shall be approved by the Secretary of Agriculture are permitted.

Sales under false name prohibited.

Trade names allowed.

Sanitary inspection of establishments.

The Secretary of Agriculture shall cause to be made, by experts in sanitation or by other competent inspectors, such inspection of all slaughtering, meat canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, and goats are slaughtered and the meat and meat food products thereof are prepared for interstate or foreign commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and to prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary condition of any such establishment are such that the meat or meat food products are rendered unclean, unsound, unhealthful, unwholesome, or otherwise unfit for human food, he shall refuse to allow said meat or meat food products to

Rejection of products if conditions insanitary.

be labeled, marked, stamped, or tagged as "inspected and passed."

That the Secretary of Agriculture shall cause an examination and inspection of all cattle, sheep, swine, and goats, and the food products thereof, slaughtered and prepared in the establishments hereinbefore described for the purposes of interstate or foreign commerce to be made during the night time as well as during the daytime when the slaughtering of said cattle, sheep, swine, and goats, or the preparation of said food products is conducted during the night time. Inspection at night.

That on and after October first, nineteen hundred and six, no person, firm, or corporation shall transport or offer for transportation, and no carrier of interstate or foreign commerce shall transport or receive for transportation from one State or Territory or the Distict of Columbia, to any other State Territory or the District of Columbia, or to any place under the jurisdiction of the United States, or to any foreign country, any carcasses or parts thereof, meat, or meat food products thereof which have not been inspected, examined, and marked as "inspected and passed," in accordance with the terms of this Act and with the rules and regulations prescribed by the Secretary of Agriculture; Provided, That all meat and meat food products on hand on October first, nineteen hundred and six, at establishments where inspection has not been maintained, or which have been inspected under existing law, shall be ex- Interstate transportation prohibited after October 1, 1906, of meats, etc., not inspected. Proviso. Inspection of stock on hand.

amined and labeled under such rules and regulations as the Secretary of Agriculture shall prescribe, and then shall be allowed to be sold in interstate or foreign commerce.

Penalty for illegal acts, counterfeiting, etc.

That no person, firm, or corporation, or officer, agent, or employe thereof, shall forge, counterfeit, simulate, or falsely represent, or shall without proper authority use, fail to use, or detach, or shall knowingly or wrongfully alter, deface, or destroy, or fail to deface or destroy, any of the marks, stamps, tags, labels, or other identification devices provided for in this Act, or in and as directed by the rules and regulations prescribed hereunder by the Secretary of Agriculture, on any carcasses, parts of carcasses, or the food product, or containers thereof, subject to the provisions of this Act, or any certificate in relation thereto, authorized or required by this Act or by the said rules and regulations of the Secretary of Agriculture.

Inspection of cattle, etc., for export.

That the Secretary of Agriculture shall cause to be made a careful inspection of all cattle, sheep, swine, and goats intended and offered for export to foreign countries at such times and places, and in such manner as he may deem proper, to ascertain whether such cattle, sheep, swine, and goats are free from disease.

Certificates.

And for this purpose he may appoint inspectors who shall be authorized to give an official certificate clearly stating the condition in which such cattle, sheep, swine, and goats are found.

Clearances refused unless certificate obtained.

And no clearance shall be given to any vessel having on board cattle, sheep, swine, or goats for export to a foreign country until the owner or shipper of such cattle, sheep, swine, or goats has a certificate from the inspector herein authorized to be appointed, stating that the said cattle, sheep, swine, or goats are sound and healthy, or unless the Secretary of Agriculture shall have waived the requirement of such certificate for export to the particular country to which such cattle, sheep, swine, or goats are to be exported.

Inspection of meats, etc., for exports.

That the Secretary of Agriculture shall also cause to be made a careful inspection of the carcasses and parts thereof of all cattle, sheep, swine, and goats, the meat of which, fresh, salted, canned, corned, packed, cured, or otherwise prepared, is intended and offered for export to any foreign country, at such times and places and in such manner as he may deem proper.

Certificates.

And for this purpose he may appoint inspectors who shall be authorized to give an official certificate stating the condition in which said cattle, sheep, swine, or goats, and the meat thereof, are found.

Clearances refused unless certificate obtained.

And no clearance shall be given to any vessel having on board any fresh, salted, canned, corned, or packed beef, mutton, pork, or goat meat, being the meat of animals killed after the passage of this Act, or except as hereinbefore provided for export to and sale in a foreign country from any port in the United

States, until the owner or shipper thereof shall obtain from an inspector appointed under the provisions of this Act a certificate that the said cattle, sheep, swine, and goats were sound and healthy at the time of inspection, and that their meat is sound and wholesome, unless the Secretary of Agriculture shall have waived the requirements of such certificate for the country to which said cattle, sheep, swine, and goats or meats are to be exported.

Waiver of certificate.

Delivery of certificates.

That the inspectors provided for herein shall be authorized to give official certificates of the sound and wholesome condition of the cattle, sheep, swine, and goats, their carcasses and products as herein described, and one copy of every certificate granted under the provisions of this Act shall be filed in the Department of Agriculture, another copy shall be delivered to the owner or shipper, and when the cattle, sheep, swine, and goats or their carcasses and products are sent abroad, a third copy shall be delivered to the chief officer of the vessel on which the shipment shall be made.

Products of establishments violating law, not to be sold, transported, etc.

That no person, firm, or corporation engaged in the interstate commerce of meat or meat food products shall transport or offer for transportation, sell or offer to sell any such meat or meat food products in any State or Territory or in the District of Columbia or any place under the jurisdiction of the United States, other than in the State or Territory or in the District of Columbia or any place under the jurisdiction of the United States in which

the slaughtering, packing, canning, rendering, or other similar establishment owned, leased, operated by said firm, person, or corporation is located unless and until said person, firm, or corporation shall have complied with all of the provisions of this Act.

Penalty for violations.

That any person, firm, or corporation, or any officer or agent of any such person, firm, or corporation, who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor and shall be punished on conviction thereof by a fine of not exceeding ten thousand dollars or imprisonment for a period not more than two years, or by both such fine and imprisonment, in the discretion of the court.

Appointment of inspectors.

That the Secretary of Agriculture shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, and goats, the inspection of which is hereby provided for, and all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag, or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be sound, healthful, wholesome, and fit for human food, and to contain no dyes, chemicals, preservatives, or

Duties.

ingredients which render such meat food product unsound, unhealthful, unwholesome, or unfit for human food; and to have been prepared under proper sanitary conditions, hereinbefore provided for; and shall perform such other duties as are provided by this Act and by the rules and regulations to be prescribed by said Secretary of Agriculture; and said Secretary of Agriculture shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this Act, and all inspections and examinations made under this Act shall be such and made in such manner as described in the rules and regulations prescribed by said Secretary of Agriculture not inconsistent with the provisions of this Act.

Rules and Regulations.

Punishment for bribing, etc., officials.

That any person, firm, or corporation, or any agent or employe of any person, firm, or corporation who shall give, pay, or offer, directly or indirectly, to any inspector, deputy inspector, chief inspector, or any other officer or employee of the United States authorized to perform any of the duties prescribed by this Act or by the rules and regulations of the Secretary of Agriculture any money or other thing of value, with intent to influence said inspector, deputy inspector, chief inspector or other officer or employee of the United States in the discharge of any duty herein provided for, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not less than five thousand dollars, nor more than

ten thousand dollars, and by imprisonment not less than one year, nor more than three years; and any inspector, deputy inspector, chief inspector, or other officer or employe of the United States authorized to perform any of the duties prescribed by this Act who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employes thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in interstate or foreign commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than one thousand dollars, nor more than ten thousand dollars, and by imprisonment not less than one year, nor more than three years.

Accepting gifts, etc., by officials.

That the provisions of this Act requiring inspection to be made by the Secretary of Agriculture shall not apply to animals slaughtered by any farmer on the farm and sold and transported as interstate or foreign commerce, nor to retail butchers and retail dealers in meat and meat food products, supplying their customers: Provided, That if any person shall sell or offer for sale or transportation for interstate or foreign commerce any meat or meat food products which are diseased, unsound, unhealthful, unwholesome, or otherwise unfit for

Exceptions to farmers, retailers, etc.

Provisos. Punishment for sale, etc., unwholesome products.

human food, knowing that such meat food products are intended for human consumption, he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for a period of not exceeding one year, or by both such fine and imprisonment:

Maintenance of inspection authorized.

Provided, also, that the Secretary of Agriculture is authorized to maintain the inspection in this Act provided for at any slaughtering, meat canning, salting, packing, rendering, or similar establishment notwithstanding this exception, and that the persons operating the same may be retail butchers and retail dealers or farmers; and where the Secretary of Agriculture shall establish such inspection then the provisions of this Act shall apply notwithstanding this exception.

REGULATIONS GOVERNING THE MEAT INSPECTION OF THE UNITED STATES DEPARTMENT OF AGRICULTURE.

Effective April 1, 1908.

REGULATION 3. INTERPRETATION AND DEFINITION OF WORDS AND TERMS.

DEFINITIONS.

Wherever in these regulations the following words, names, or terms are used they shall be construed as follows:

MEAT FOOD PRODUCTS.

SECTION 8. MEAT FOOD PRODUCTS. PARAGRAPH 1. A meat food product, within the meaning of the meat-inspection Act and of these regulations, is considered to be any article of food intended for human use which is derived or prepared in whole, or in part from any edible portion of the carcass of cattle, sheep, swine, or goats, if the said edible portion so used is a considerable and definite portion of the finished food.

MIXTURES, ETC.

PARAGRAPH 2. MIXTURE: A mixture of which meat is an ingredient will not be considered a meat food product unless the meat contained therein is a definite and considerable portion of the said mixture. But where such mixture is prepared in a part of an official estab-

lishment, the sanitation of that part of the establishment will be supervised by the Department, and the meat or meat food product will be inspected before it enters the said mixture. The mixture shall not bear the meat-inspection legend or any simulation thereof. If any reference is made to Federal inspection it shall be in the following form: "The meat contained herein has been inspected and passed at an establishment where Federal inspection is maintained." Mixtures such as mince-meat, soups, etc., which come under this description and which are not officially labeled, are allowed in interstate and foreign commerce without further inspection, and without certificates, subject to the provisions and requirements of the Food and Drugs Act of June 30, 1906, and the regulations made thereunder.

MEDICAL MEAT PRODUCTS.

SECTION 9. MEDICAL MEAT PRODUCTS: Products such as meat juice, meat extract, etc., which are intended only for medicinal purposes and are advertised only to the medical profession, are not considered meat food products within the meaning of this order.

REGULATION 25. TRANSPORTATION.

SECTION 19. PARAGRAPH 6. When inedible grease, tallow, or other fat for industrial use is of such a nature or is intended for such an industrial use that it is impracticable to denature the same or that denaturing will make it impossible to put the product to the desired industrial use, such inedible grease,

tallow, or other fat may be shipped from one State or Territory or the District of Columbia to another State or Territory or the District of Columbia, or to a foreign country, without denaturing if the outside container of the said inedible grease, tallow, or other fat be marked as follows: The end of the containers shall be painted white and conspicuously stenciled or burned with the true name of the product and the word "INEDIBLE."

No such shipment shall be accepted by any carrier unless and until the shipper shall certify in writing that the said inedible grease, tallow, or other fat is of such a character or is intended for such use that denaturing is impossible or will render said inedible grease, tallow, or other fat unavailable for the desired industrial use.

The shipper's certificate shall be in the following form:

Date....., 19.....

INEDIBLE FAT.

Name of Common Carrier.....
Consignor .....
Point of Shipment.....
Consignee .....
Destination .....

I hereby certify that the following-described fat is inedible and is not intended for food purposes, and that the said fat is of such a character or is intended for such a use that denaturing is impossible or will

render said fat unavailable for the desired industrial use.

KIND OF PRODUCT	AMOUNT AND WEIGHT
.....	.....
.....	.....
.....	.....

.....

(*Signature of Shipper.*)

.....

(*Business or occupation of Shipper.*)

.....

(*Address of Shipper.*)

As evidence to connecting carriers that the proper shipper's certificate is on file with the initial carrier, the waybills, transfer bills, running slips, or conductors' cards accompanying such shipments must have embodied in, stamped upon, or attached to the same a signed statement in the following form:

(Name of carrier).....

Inedible and not intended for food purposes, as evidenced by shipper's certificate on file with the initial carrier.

(Signed).....Agent.

The shipper's certificate shall be made in duplicate, and one copy shall be immediately forwarded by the carrier to the Chief of the Bureau of Animal Industry, Washington, D. C.

REGULATIONS GOVERNING THE MEAT INSPECTION OF THE UNITED STATES DEPARTMENT OF AGRICULTURE.

Effective November 1, 1914.

REGULATION 1. DEFINITIONS.

SECTION 1. For the purposes of these regulations the following words, phrases, names, and terms shall be construed, respectively, to mean:

PARAGRAPH 21. MEAT FOOD PRODUCT: Any article of food or any article which enters into the composition of food for human consumption, which is derived or prepared, in whole or in part, from any portion of the carcass of any cattle, sheep, swine, or goat, if such portion is all or a considerable and definite portion of the article, except such articles as organo-therapeutic substances, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession.

PARAGRAPH 22. MEAT AND PRODUCTS: Carcasses, parts of carcasses, meat, products, food products, meat products, and meat food products of, or derived from, cattle, sheep, swine, and goats, which are capable of being used as food by man.

PARAGRAPH 23. MEAT OR PRODUCT: Any part or all of meat and products.

REGULATION 4. APPLICATIONS FOR INSPECTION OR EXEMPTION; RETAIL BUTCHERS, RETAIL DEALERS, AND FARMERS; DECLARATIONS FOR INEDIBLE PRODUCTS ESTABLISHMENTS.

SECTION 6. PARAGRAPH 1. The proprietor or operator of each grease rendering or grease refining establishment, and of every other establishment which has not been granted inspection or exemption, which prepares or ships any article or articles derived wholly or in part from cattle, sheep, swine, or goats for interstate or foreign commerce, or in the District of Columbia, a Territory, or other place under the jurisdiction of the United States, which article or articles it is claimed are not capable of being used as food by man, shall file with the Secretary of Agriculture a declaration that none of such articles are for human consumption, nor will be sold or shipped from such establishment otherwise than in compliance with these regulations, and that no article for human consumption derived wholly or in part from cattle, sheep, swine, or goats will be prepared at or in such establishment, or will be sold or shipped therefrom. Such establishments may be inspected at any time to ascertain whether any article derived wholly or in part from cattle, sheep, swine, or goats is prepared therein for human consumption, or whether any declaration filed or offered for filing is false in any particular.

PARAGRAPH 2. The proprietor or operator of each establishment which has been granted inspection or exemption and which prepares therein any article or articles derived wholly or in part from cattle, sheep,

swine, or goats for interstate or foreign commerce, or in the District of Columbia, a Territory, or other place under the jurisdiction of the United States, which article or articles it is claimed are not capable of being used as food by man, shall file with the Secretary of Agriculture a declaration that none of such articles are for human consumption nor will be sold or shipped from such establishment otherwise than in compliance with these regulations.

PARAGRAPH 3. The Secretary of Agriculture may refuse to file, or if previously filed may withdraw from his files and cancel, any declaration which is false in any particular or the terms of which are violated in any respect.

REGULATION 25. TRANSPORTATION.

SECTION 12. When inedible grease or tallow or other inedible article derived wholly or in part from cattle, sheep, swine, or goats, suitable only for industrial use, is of such a nature or for such an industrial use that it is impracticable to denature the same, such product may be transported from one State or Territory or the District of Columbia to or through another State or Territory or the District of Columbia, or to any place under the jurisdiction of the United States, or to a foreign country, without denaturing, if both ends of the containers are painted white and conspicuously stenciled or burned with the true name of the product and the word "inedible" in letters not less than two inches high, and the other provisions of this section are complied with. The carrier shall require, and the shipper shall make and deliver to the carrier, a certificate in duplicate in the following form:

Date....., 19.....

INEDIBLE FAT.

Name of Carrier.....

Consignor .....

Point of Shipment.....

Consignee .....

Destination .....

I hereby certify that the following described fat is not capable of being used as food by man, is suitable only for industrial purposes, is not for food purposes, and is of such a character or for such a use that denaturing is impracticable. I further certify that there is now on file with the Secretary of Agriculture a declaration by the establishment in which said fat was prepared, or from which it is offered for shipment, in compliance with Section 6 of Regulation 4 of the regulations of the Secretary of Agriculture governing meat inspection.

KIND OF PRODUCT	AMOUNT AND WEIGHT
.....	.....
.....	.....
.....	.....

.....

(*Signature of Shipper.*)

.....

(*Business or Occupation of Shipper.*)

.....

(*Address of Shipper.*)

The signature of the shipper or of his agent shall be written in full. This certificate shall be separate and apart from any waybill, bill of lading, or other form ordinarily used in the transportation of meat. The duplicate certificate shall be forwarded immediately by the initial carrier to the Chief of the Bureau of Animal Industry, Washington, D. C.

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28017—17——1

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

PITTSBURGH MELTING COMPANY, appellant, *v.* G. E. TOTTEN, INSPECTOR OF THE BUREAU of Animal Industry of the Department of Agriculture, appellee.	No. 193.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF ON BEHALF OF APPELLEE.

STATEMENT OF THE CASE.

The bill in this case seeks a mandatory injunction requiring the Baltimore and Ohio Railroad Company to receive and transport a carload of oil, not inspected and passed under the terms of the meat-inspection act but labelled "tallow oil" and marked "inedible," and consigned to a purchaser in Holland, and also an injunction restraining G. E. Totten, a Government inspector, from interfering with the shipment of "any oleo or tallow oil" manufactured by appellant. (R., pp. 3–13.)

The District Court granted the injunctions; but the Circuit Court of Appeals reversed the decree and ordered the bill dismissed. (R., pp. 127 and 137.)

Statute involved.

The case is one under what is known as the meat inspection act (c. 3913, 34 Stat. 674; c. 2907, 34 Stat. 1260–1265). That act, "for the purpose of preventing the use in interstate or foreign commerce" of meat and meat food products when unsound, unhealthful, unwholesome, or otherwise unfit for human food, provides for an elaborate system of inspection of meat and meat products. The features of the act which it is necessary to mention are:

1. There shall be an examination and inspection of all meat animals before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment, in which they are to be slaughtered and the meat and meat food products used in interstate or foreign commerce.

2. There is to be a post-mortem inspection of the carcasses and parts thereof of all animals slaughtered in such establishments to be prepared for human consumption. The parts found fit for human food are to be marked "Inspected and passed," and those found unfit, "Inspected and condemned." And the latter are to be "destroyed for food purposes" in the presence of an inspector. And upon failure to destroy any such condemned parts, the Secretary of Agriculture is authorized to withdraw inspectors from the establishment.

3. The foregoing provisions shall apply to—

> all carcasses or parts of carcasses of cattle, sheep, swine, and goats, or the meat or meat products thereof which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; * * *.

4. The inspection of meat products is provided for as follows:

> That for the purposes hereinbefore set forth the Secretary of Agriculture shall cause to be made by inspectors appointed for that purpose an examination and inspection of all meat-food products prepared for interstate or foreign commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, and for the purposes of any examination and inspection said inspectors shall have access at all times, by day or night, whether the establishment be operated or not, to every part of said establishment; and said inspectors shall mark, stamp, tag, or label as "Inspected and passed" all such products found to be sound, healthful, and wholesome, and which contain no dyes, chemicals, preservatives, or ingredients which render such meat or meat-food products unsound, unhealthful, unwholesome, or unfit for human food; and said inspectors shall label, mark, stamp, or tag as "Inspected and condemned" all such prod-

> ucts found unsound, unhealthful, and unwholesome, or which contain dyes, chemicals, preservatives, or ingredients which render such meat or meat-food products unsound, unhealthful, unwholesome, or unfit for human food, and all such condemned meat-food products shall be destroyed for food purposes, as hereinbefore provided, and the Secretary of Agriculture may remove inspectors from any establishment which fails to so destroy such condemned meat-food products: * * *.

5. Having provided this system of inspection, the act contained this provision:

> That on and after October first, nineteen hundred and six, no person, firm, or corporation shall transport or offer for transportation, and no carrier of interstate or foreign commerce shall transport or receive for transportation from one State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, or to any place under the jurisdiction of the United States, or to any foreign country, any carcasses or parts thereof, meat, or meat-food products thereof which have not been inspected, examined, and marked as "Inspected and passed," in accordance with the terms of this act and with the rules and regulations prescribed by the Secretary of Agriculture: * * *.

6. The only exception to the requirement of inspection of animals intended for slaughter and their carcasses at the place of slaughter is:

> That the provisions of this act requiring inspection to be made by the Secretary of Agriculture shall not apply to animals slaughtered by any farmer on the farm and sold and transported as interstate or foreign commerce, nor to retail butchers and retail dealers in meat and meat-food products, supplying their customers: * * *.

To the requirement of both an ante mortem and a post-mortem inspection of meat or meat products brought into any meat-canning, salting, packing, rendering, or similar establishment, there is no exception.

The contentions.

While admitting that its product is fit for use in the manufacture of oleomargarine and for other food purposes for which oleo oil is used, appellant insists this product which it labels "tallow oil" and marks "inedible" is intended not for food but industrial purposes and is not a food product within the meaning of the act. The right, therefore, is asserted to ship in interstate and foreign commerce without inspection.

The contention of the appellee is that the oil in question is a meat-food product and that its transportation in interstate or foreign commerce, without being inspected and marked, is absolutely prohibited, although it may also be used for industrial purposes.

The facts.

The bill describes appellant's product as "tallow oil, sometimes known as oleo oil." (R., p. 3.) And the prayer is for an injunction against interfering with the shipment of "any oleo or tallow oil" manufactured by appellant. (R., p. 13.)

There are two products manufactured from the fat of meat animals. One is generally known as oleo oil and the other as tallow oil.

Tallow oil, on account of its unpleasant odor and taste, can not be used for food purposes. It is used for lubricating purposes, in the manufacture of soap, and for other industrial purposes.

Oleo oil, on the other hand, is used principally in the manufacture of oleomargarine, an article of food, of which it is the chief ingredient. For this purpose nothing is done with it in the way of refining or producing any chemical change. It is simply mixed with a little butter and salt, and sometimes other ingredients, and then churned. The finished article contains from 20 to 80 per cent of oleo oil, the average being from 55 to 60 per cent. Oleo oil itself is sometimes used, like butter, for food and sometimes, like lard, for shortening, cooking, and frying. (R., pp. 52–62, 67–68, 70–74, 81–85, 91–92, 100.)

Chemically there is no appreciable difference between these two oils. There is, however, a radical difference between the processes by which they are produced. The witnesses very generally agree in describing the two processes as follows:

OLEO OIL.	TALLOW OIL.
Rendered in open kettles at low temperature (145° to 150°).	Rendered in closed kettles at high temperature (280°) under high pressure.
No cooked flavor.	Cooked flavor. Strong, unpleasant taste and odor.
Bland, mild, pleasant taste, and no disagreeable odor.	Dull, grayish color.
Pale, yellow color.	

From this difference in process come the pleasant taste and absence of disagreeable odor which make the oil, in one case, suitable for food purposes, and the unpleasant taste and odor which, in the other, prevent its use for such a purpose.

One witness says that oleo oil is made from the fat of the caul, ruffle, and heart, and another that tallow oil is made from spoiled or diseased meat which, after being condemned, is destroyed for food purposes by being denatured. But the testimony, as a whole, leaves no doubt that the character of the oil, as regards its use for food purposes, is determined by the process employed. Under the open kettle process the product is oleo oil, and under the high-pressure process it is tallow oil. It may be that when an extra fine grade of oleo oil is desired fats from selected parts are used. But generally all sound and wholesome fats are subjected to the open-kettle process and inspected and passed as oil fit for food purposes, while fats from condemned meat are always subjected to the process which prevents their use for such purposes, and the product is sold as tallow oil.

Appellant now brands its product when shipped in interstate or foreign commerce as "tallow oil." It admits, however, in the bill that this product is sometimes known as "oleo oil." It seems, in fact, to draw no distinction between the two kinds of oil, since it seeks an injunction against interference with its shipment of "oleo or tallow oil." And its witnesses say there is no difference between the processes by which the two are made.

The product in question is produced by the open-kettle process. Four experts from the Department of Agriculture, after a thorough examination, pronounced it oleo oil. (R., pp. 50–52, 53–54, 63–65, 65–66, 68–69.) Two chemists from packing houses, when told its properties, said it was oleo and not tallow oil. (R., pp. 73 and 81.)

But whether these oils be called oleo oil or what not, it can not be doubted that they are suitable to be used for the food purposes for which that oil is commonly used. Appellant itself used them for those purposes for years. Its own witness describes its original business as "tallow business, the oleo oil business, making some greases." (R., p. 111.)

In 1881 it commenced the manufacture of oleomargarine in which it used the oils it had previously manufactured and which are the same it now sells. Five or six years later the State of Pennsylvania prohibited the manufacture and sale of oleomargarine. What appellant then did is best shown by an extract from the testimony of one of its witnesses:

Q. What did you do with your plant and equipment?

A. We ran it on; we then made oleo or tallow oil, just the same as we are making now, and sold it. That was legal. *We stopped making oleomargarine, complete and churned and put up for human use.*

Q. And you used the equipment that you formerly used, for the purpose of making tallow oil?

A. We did, and are doing so to-day; never changed. (R., p. 111.)

Moreover, appellant's officers, as witnesses, say that the process under which its oils are produced is such as to preserve the value of the product *for both food and industrial purposes*, and that the effort is to make them so pure and wholesome that they may be used for any purpose; that they are capable of any use, since appellant makes them as good as it can, out of the best material it can obtain; that they can be processed so as to make them an edible product; and that they can be readily manufactured into oleomargarine. (R., pp. 42–43 and 45–46.)

While these same officers say that their product is at present *intended* for industrial purposes, they take no interest in the use made of it by purchasers, make no inquiries on that subject, and have never made any representations to customers abroad that it is inedible, except by marking it as stated, which is necessary to get it transported; and that 80 or 90 per cent of it is shipped to Holland and other coun-

tries where oleomargarine is manufactured on an extensive scale.

These are all of the facts which are really relevant. But certain other facts will now be stated because of the effort to cloud the issue with them.

When the meat-inspection act was passed this oil was largely used in the manufacture of oleomargarine and was therefore recognized as a food product, though also used for industrial purposes. From 1906 to 1910 appellant's plant was operated under Government inspection and its oils were marked "Inspected and passed," indicating that they were suitable for food purposes. During this time a portion of its fats were obtained from establishments where regular inspection was obtained and a portion from butchers and retail dealers not subject to inspection. Finally the inspector condemned the latter class of fats, and, appellant refusing to submit, the inspectors were withdrawn from its establishment. Thereafter it continued to sell the same product. It did not, however, sell directly to manufacturers of oleomargarine, and it marked its product, when shipped in interstate or foreign commerce, "inedible."

This plan was adopted under color of a regulation of the Department of Agriculture then in force which permitted the shipment of "inedible grease, tallow, or other fat for industrial use" when marked inedible and when accompanied by a certificate to the effect that it "is inedible and is not intended for food purposes," and that it is of such a character or

is intended for such a use that denaturing is impossible or will render it unavailable for the desired industrial use.

Believing that the oil in question was no more inedible than when, after inspection, it had been openly used in the manufacture of oleomargarine, the inspector notified the railroad that its shipment would be unlawful. Appellant filed an injunction bill similar to the one in the present case. There was also a criminal case against it for a violation of the meat-inspection act. But upon being acquitted in the criminal case, it dismissed its injunction bill, and for some time its shipments were not interfered with. Upon what ground the acquittal was based does not appear.

Finally, however, the Secretary of Agriculture prescribed a new regulation effective November 1, 1914, under which, for the shipment of fats claimed not to be food products, there was required a certificate, in part as follows:

> * * * the following-described fat is not capable of being used as food by man, is suitable only for industrial purposes, is not for food purposes, and is of such character or for such a use that denaturing is impracticable. (R., p. 11.)

The appellant refused to make this certificate, the railroad refused to transport its oils, and the bill in this case was filed. The reason given in the bill for its refusal is, in substance, that it could not truth-

fully say that its product is not capable of being used as a food. (R., p. 12.)

BRIEF OF ARGUMENT.

I.

Appellant's product is, according to the testimony of all the witnesses, including two of its own officers, a meat food product within the meaning of the act.

II.

Being a food product, it is no less so because it may also be used for industrial purposes.

III.

If an article is, in fact, a food product, its shipment in interstate or foreign commerce without inspection is prohibited whether the manufacturer intended it for food or other purposes.

IV.

In this case the evidence fails to show any good faith intention on the part of appellant to confine its product to industrial uses.

V.

The validity or invalidity of the regulations called in question can not affect the decision of this case, since if they were wholly void, appellant would not be entitled to ship its product in interstate or foreign commerce without inspection.

VI.

The regulations in question are, however, valid.

The case of the appellant has been presented largely upon the assumption that if the regulations of the Secretary of Agriculture mentioned in the bill were beyond his authority to make, the bill must be sustained. But this is a mistaken assumption. If the product in question is a food product within the meaning of the meat-inspection act, the bill must fail regardless of the validity or invalidity of these regulations. In that event, its shipment in interstate or foreign commerce is absolutely prohibited except after the required inspection. And if the action of the inspectors in condemning all fats not coming from inspected establishments was unauthorized and, therefore, inspectors were improperly withdrawn from appellant's plant, it might maintain an appropriate action to require a proper inspection to be made so that it could lawfully ship its product. But it would not be entitled to ship without the inspection required by law, which is the only relief sought. And, still assuming that its product is a food product, the bill in the present case would be, in nowise, helped by a holding that the regulation effective November 1, 1914, the refusal to obey which gave rise to this litigation, was invalid. That regulation did not apply to food products, but only to such products as the law did not require to be inspected. Its invalidity could not, therefore, give the right to ship a food product without the required inspection. Appellant's entire claim to relief in this case must rest upon the proposition that *its oil is not*

a food product. And even if it could maintain this proposition, it would have to maintain the further proposition that the regulation which it refused to obey was invalid.

I.

Appellant's product a food product.

The bare recital of facts above would seem to leave but little to be said on this subject. When appellant's officers testified that they had, for years, used this product as the chief ingredient in oleomargarine; that, as now produced, its value, for both food and industrial purposes is preserved and it is suitable for use in the manufacture of oleomargarine; and that they could not truthfully certify that it could not be used for food, it is difficult to see how its status as a food product could be more clearly established. If, as they say, it can be used for food, what else is necessary to make it a food product? The admission of appellant's officers that it is suitable for use in the manufacture of oleomargarine is corroborated by the experts who say that it is, in fact, oleo oil which when mixed with a little butter and salt and churned becomes oleomargarine, and which is commonly used for that purpose. The evidence shows that it is sometimes used, by itself, as a food, though, it may be admitted, this is not common. But if it was never eaten in this way, it would be no less a food product. The question is whether it is suitable for human consumption and is, in fact, used for nourishment and to sustain human life. That, to render it

more palatable, it is mixed with other articles of food can make no difference. It is still taken into the human system to help sustain life. Olive oil is not commonly eaten except in connection with other articles. Butter is not used, as it comes from the churn, without the addition of salt, and then usually only in conjunction with other food. Meat itself is used with salt and is often mixed with other ingredients in sausage and other preparations. But whether used alone or as an ingredient in some food preparation, these articles have the same food properties; they serve the same purpose to sustain human life; if impure or infected with disease, they are deleterious to health in the same way; and it would scarcely be denied that they are food products. If an article, either by itself or in conjunction with other articles, is one which is commonly eaten by human beings, it is, in the strictest sense, a food product.

This case deals with an oil which appellant formerly mixed with salt and butter and sold for food; which, when the State of Pennsylvania prohibited the manufacture and sale of oleomargarine, it sold to manufacturers of that food in other States and countries to be devoted by them to food purposes; and which, since it refused to comply with the inspection regulations, it still sells, without changing either the process of manufacture or the properties of the product which, its own officers say, is fit for food purposes, and without any inquiry as to the use to be made of it. That this oil is a food product will scarcely admit of argument.

II.

Appellant's product no less a food product because it may also be used for industrial purposes.

Many articles of food may be and are used for other than food purposes. The act itself recognizes this when it provides that meat found unfit for food shall be "*destroyed for food purposes,*" that is, put in such condition that it can not be used for food, and then may be used for other purposes. Counsel for appellant say, in the brief (p. 43), that "oleo oil can be used for any purpose for which tallow oil can be used." And this statement is supported by the record. (R., p. 57.) Tallow oil, as we have seen, can not be used for food purposes. But, as we have seen, appellant's officers admit that its product is fit for food purposes, and the evidence shows that that product is, in fact, oleo oil. Confessedly, the chief use of oleo oil is a food use—the mixing with butter and salt to make oleomargarine. It is therefore a food product. And, if a food product, the act, without qualification, requires it to be inspected before it is shipped, without regard to the use to which it is actually put. If, after inspection, it is used for other than food purposes, no one is injured. But if an unwholesome food product is put on the market it may be sold for food purposes and the public will suffer.

The fallacy of the argument is shown by appellant's contention that its product is pure and wholesome and fit for human consumption, and the obvious fact

that but for what it regards as unreasonable inspection regulations it would to-day be openly selling and shipping this oil for food purposes.

III.

Intention of manufacturer that an article shall be used for other than food purposes does not keep it from being a food product.

Confessedly, appellant is selling and shipping an article which is fit for human consumption and, therefore, a food product. Congress has not seen fit to say that an article *intended for food purposes* shall be inspected; but has said, in the plainest language, that all meat food products *intended for use in interstate or foreign commerce* shall be subject to inspection. Unless, therefore, the act is to be emasculated, when the article in question is, in fact, a food product, *the intention of the manufacturer* is wholly immaterial.

IV.

That appellant did not intend product for food purposes not shown.

But no good-faith intention on the part of the appellant to confine its product to industrial uses is shown. It follows the same processes, selects its fats with the same care, and uses the same efforts to make the oil pure, wholesome, and healthful that were employed when it used or sold the same product for the manufacture of oleomargarine. True, it marks its shipments "tallow oil" and "inedible." But this it does solely for the purpose of getting transporta-

tion. It is not shown that it sells direct to manufacturers of oleomargarine. But such sales would natural y be avoided because too plainly stamping as false its "inedible" brand. It ships 80 or 90 per cent of its product abroad, and it has made no effort to show what use its foreign customers make of it. In fact, it makes no inquiries as to that. Its attitude is shown by this statement of one of its officers:

> The purpose for which our customers use it is entirely immaterial to us. We make no inquiries whatever. (R., p. 40.)

It has been shipping the same product to these foreign markets since 1879 (R., p. 32), and it can not be doubted that the customers who formerly got it as an acknowledged food product are fully advised that they are still getting the same thing and that it is now marked inedible only for the purpose of getting transportation. In other words, appellant's product is not intended for industrial purposes only. It is manufactured and sold for any purpose for which it is capable of being used by purchasers, including food purposes, for which it is admittedly suitable.

V.

Validity of regulations not involved.

We shall not waste time on the elaborate argument to the effect that the Secretary of Agriculture cannot, under the guise of regulations, impose upon appellant legislation which Congress has not seen fit to enact. That contention is fully conceded.

But what we have said is conclusive of the case whether the regulations mentioned are valid or invalid. If inspection was withdrawn from appellant's plant because it refused to submit to an unauthorized rule of inspection, it has its remedy. But that remedy is not to be permitted to ship meat food products without inspection. And the invalidity of regulations applying only to "inedible" products cannot serve to authorize the shipment of uninspected edible products.

VI.

Regulations valid.

While we have passed over the validity of the regulations called in question as immaterial in this case, we are not to be understood as admitting their invalidity. On the contrary, we think they are entirely valid and necessary to put into effect the spirit of the act.

CONCLUSION.

To sum up our argument, we quote the admirable statement of its conclusions by the Circuit Court of Appeals:

> By the express language of the act, no meat food product can be shipped or carried in interstate or foreign commerce unless it has first been—
>
> "* * * inspected, examined, and marked as 'inspected and passed,' in accordance with the terms of this act and with the rules and

regulations prescribed by the Secretary of Agriculture."

If, therefore, the oil is a meat food product, the statute denied it the right to be carried, for concededly it had neither been inspected nor examined nor officially marked. If it is not a meat food product, it is not included in the act at all. In considering this question, we remark, first, that the substance under inquiry is clearly proved to be "oleo oil." Apparently there is little, if any, chemical difference between tallow oil and oleo oil, but they differ distinctly in methods of manufacture, and in appearance, taste, and smell. As already stated, the plaintiff makes its oil by the same machinery that was formerly used in the manufacture of oleomargarine; moreover, it is made by the process that is appropriate for rendering oleo oil, and not by the process employed for rendering tallow oil; and, finally, it exhibits all the characteristics of the former substance. Whatever name one may choose to give it, the evidence leaves us no room to doubt what it really is.

Being oleo oil, therefore, is it a meat food product? It is of course a meat product. Is it a food? In its condition as an oil immediately after rendering, it is occasionally eaten as food just as olive oil is eaten, but so rarely that we lay no stress upon that fact; but the evidence shows without contradiction that for shortening purposes, and as a grease in cooking, it is often used by bakers and householders just as lard is used; and still further, that without

being refined or undergoing any chemical change it is the principal ingredient of oleomargarine. In manufacturing this substitute for butter oleo oil is mechanically mixed by churning with other substances, such as milk, a little butter, salt, neutral lard, or cottonseed oil. What the oleo oil was before the mixing, it continues to be afterward, and there can be no doubt that the mixture is fit for human consumption and is largely used for food. The oil has probably some industrial uses also, although the evidence is not very clear on this point, but we think there can be no reasonable question that its chief use is to be the base of oleomargarine. Of this substance it constitutes more than 50 per cent. As a food product, we see no essential difference between oleo oil and lard, and it can hardly be questioned that lard is a food. Nor, indeed, do we see any essential difference as a food between olive oil and oleo oil. The former is probably more palatable and is more often used alone, but its chief use is to be mixed with other foods for flavoring purposes. Obviously, the fact that the oleo oil has not been cooked is not decisive. A raw egg is food before as well as after it is mixed with the other ingredients of a salad dressing; and lard is food before as well as after it is mixed with flour and water. Indeed, to our minds the proposition under discussion seems so evident that we find some difficulty in giving reasons to support it. Congress has excluded from interstate and from foreign commerce all

uninspected meat food products, and as this was within the legislative power the duty of the court is to enforce the law.

If this conclusion is sound, the other questions considered below and argued here cease to be important. Being a meat food product, the plaintiff's oleo oil could not be carried in interstate or in foreign commerce—in this case, to Holland—without previous inspection; and, as the shipment that gave rise to the dispute had not been inspected, the defendants were justified in the course of conduct they pursued. (R., 135–136; 232 Fed. 694, 696.)

It is respectfully submitted that the decree of the Circuit Court of Appeals should be affirmed.

WILLIAM L. FRIERSON,
Assistant Attorney General.

DECEMBER, 1917.

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1918.

PITTSBURGH MELTING COMPANY *v.* TOTTEN, INSPECTOR OF THE BUREAU OF ANIMAL INDUSTRY OF THE DEPARTMENT OF AGRICULTURE.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 28. Argued April 22, 1918.—Decided November 4, 1918.

Oleo oil, a substance made from the fat of slaughtered beeves, seldom used by itself as food, but employed largely in making oleomargarine and somewhat in cooking, is a "meat food product," within the Meat Inspection Act of 1906–1907, when manufactured fit for human consumption and not "denatured," and is debarred from interstate and foreign commerce unless first inspected and passed as by that act provided. P. 7.

So *held*, where the shipper labeled the product "inedible," asserting it was not intended for food purposes, but retained no control of the use and declined to certify, as required by regulations of the Secretary of Agriculture, that it was suitable for industrial purposes only, and incapable of being used as food by man.

232 Fed. Rep. 694, affirmed.

THE case is stated in the opinion.

Mr. Samuel McClay, with whom *Mr. William M. Robinson* and *Mr. Allen H. Kerr* were on the brief, for appellant:

The act is directed against meat-food products which are unfit for human food, and applies only to establishments whose products are for human consumption, not to those that prepare and sell exclusively oils intended for industrial purposes.

This view harmonizes with the purpose of the act as expressed in its title and with the construction by the Department of Agriculture in the regulations of April 1, 1908, which, with the approval of the Attorney General's opinion (28 Ops. Atty. Gen. 369, 377), restricted meat-food products to those intended for human use and limited the scope of the act, and jurisdiction under it, accordingly.

The regulations of November 1, 1914, extending the definition to products "capable of being used as food by man," and requiring appellant to certify that its products were not capable of being so used, are unreasonable, and exceed the intent of the act and the power of the Secretary of Agriculture under it. The words "meat" and "meat food products" cannot be separated from the purpose for which the products are to be used. *Commonwealth* v. *Schollenberger*, 153 Pa. St. 625.

The Secretary cannot by his regulations alter, amend, extend or modify the act of Congress. *Morrill* v. *Jones*, 106 U. S. 466; *United States* v. *11,150 lbs. of Butter*, 195 Fed. Rep. 657, 663; *St. Louis Independent Packing Co.* v. *Houston*, 215 Fed. Rep. 553, 559, 561. The act does not give him power over inedible grease intended solely for industrial purposes. There was no evidence that appellant was guilty of an attempted evasion. The Secretary may adopt such regulations not inconsistent with law as are necessary to carry out the purposes of the act, but the act confers no power whatever to determine what shall constitute a "meat" or a "meat food product." The meaning of those words, as used, is clear.

1. Argument for Appellee.

Congress cannot delegate legislative authority to an executive officer, and did not intend to do so.

If the meaning of the words, as used in the act, is doubtful, the construction which the Secretary placed upon them for a period of more than six years should have great if not controlling weight.

Appellant's product was tallow oil and not oleo oil.

Appellant rendered its oils from fats purchased from retail butchers and dealers (not subject to the act—§ 21), and from inspected wholesalers, and it had the right to ship them if they were not unhealthful or unwholesome, and even then, if they were intended for industrial and not for food purposes. The Secretary may impose inspection either on the retail dealer or butcher, but, until he elects to do so, neither the retail butcher or dealer nor his product are within the act. He could not require appellant to buy its fats from official establishments rather than retail butchers or dealers. The Department having withdrawn inspection for failure to accede to this demand, appellant thereafter shipped its product solely as inedible, and so marked it, in accordance with the regulations of 1908, certifying that it was intended for industrial uses. Purchasers were not deceived; if any of them converted the oils into a use for which they were not sold, appellant was in no way responsible.

Neither tallow nor oleo oil is ordinarily used as a food.

Denaturing is not practicable and is only adopted in cases of fats taken from diseased animals which have been condemned.

Mr. Assistant Attorney General Frierson for appellee:

Appellant's product is a meat-food product within the meaning of the act.

Being a food product, it is no less so because it may also be used for industrial purposes.

If an article is, in fact, a food product, its shipment

in interstate or foreign commerce without inspection is prohibited whether the manufacturer intended it for food or other purposes.

The evidence fails to show any good faith intention on the part of appellant to confine its product to industrial uses.

The validity or invalidity of the regulations called in question can not affect the decision of this case, since, if they were wholly void, appellant would not be entitled to ship its product in interstate or foreign commerce without inspection.

The regulations in question are, however, valid.

MR. JUSTICE DAY delivered the opinion of the court.

The Pittsburgh Melting Company filed a bill in the District Court of the United States for the Western District of Pennsylvania against the Baltimore & Ohio Railroad Company and G. E. Totten, Inspector of the Bureau of Animal Industry of the Department of Agriculture, seeking a mandatory injunction requiring the Railroad Company to receive and carry in interstate and foreign commerce shipments of oil, the manufacture of the Melting Company, and to restrain the Government Inspector from interfering with the shipments.

A decree in favor of the complainant was rendered in the District Court. 229 Fed. Rep. 214. Upon appeal this decree was reversed by the Court of Appeals, and the cause remanded to the District Court with directions to dismiss the bill. 232 Fed. Rep. 694.

The case arises under the Meat Inspection Act of 1906, 1907, c. 3913, 34 Stat. 674, 675; c. 2907, 34 Stat. 1260, 1262, 1265. The act provides an elaborate system of inspection of animals before slaughter, and of carcasses after slaughter and of meat-food products, with a view to prevent the shipment of impure, unwholesome, and

unfit meat and meat-food products in interstate and foreign commerce. The act in part provides:

"That for the purposes hereinbefore set forth the Secretary of Agriculture shall cause to be made by inspectors appointed for that purpose an examination and inspection of all meat food products prepared for interstate or foreign commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, and for the purposes of any examination and inspection said inspectors shall have access at all times, by day or night, whether the establishment be operated or not, to every part of said establishment; and said inspectors shall mark, stamp, tag, or label as 'Inspected and passed' all such products found to be sound, healthful, and wholesome, and which contain no dyes, chemicals, preservatives, or ingredients which render such meat or meat food products unsound, unhealthful, unwholesome, or unfit for human food; and said inspectors shall label, mark, stamp, or tag as 'Inspected and condemned' all such products found unsound, unhealthful, and unwholesome, or which contain dyes, chemicals, preservatives, or ingredients which render such meat or meat food products unsound, unhealthful, unwholesome, or unfit for human food, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the Secretary of Agriculture may remove inspectors from any establishment which fails to so destroy such condemned meat food products. . . ."

And the act further provides:

"That on and after October first, nineteen hundred and six, no person, firm, or corporation shall transport or offer for transportation, and no carrier of interstate or foreign commerce shall transport or receive for transportation from one State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, or to any place under the jurisdiction of the United

States, or to any foreign country, any carcasses or parts thereof, meat, or meat food products thereof which have not been inspected, examined, and marked as 'Inspected and passed,' in accordance with the terms of this Act and with the rules and regulations prescribed by the Secretary of Agriculture: . . ."

The facts appearing of record so far as we deem them necessary to the decision of the case are:

The Melting Company has long been engaged in rendering or converting animal fats into various products, including the oil which is the subject-matter of this controversy. At one time the Company made oleomargarine, but owing to adverse legislation of the State of Pennsylvania desisted from doing so. Government inspectors were in the works of the Melting Company and inspected and marked the products until 1909, when a controversy arose between the Company and the Government officers as to the purchase of the fats used by the Company. Upon refusal to comply with the orders of such officers, inspection was withdrawn. Whether this action was right or not we do not stop to enquire, since the claim for relief is based upon the allegation that complainant's oil is not a meat-food product within the meaning of the statute.

After inspection was withdrawn, the Company continued to ship its oil, but did so under the then regulations of the Department of Agriculture concerning the shipment of fat for industrial use, as "inedible," and so marking the receptacle containing the same and making the certificate then required by the Department of Agriculture that it was inedible and not intended for food purposes. On November 1, 1914, the Department adopted a new regulation requiring a certificate to accompany the shipment of such fats claimed not to be food products, stating that the same "is not capable of being used as food by man, is suitable only for industrial purposes, is not for food purposes, and is of such character or for

such a use that denaturing is impracticable." The regulation permits the shipment of oil for industrial uses after it is "denatured," that is, treated with a substance which renders it unfit for food, while still fit for use in industrial purposes. The Melting Company refused to make this certificate, which resulted in the notice to the Railroad Company to refuse to carry the oil, and brought about this suit to compel the carrier to receive and transport it.

The District Court found that the oil manufactured and shipped by the Melting Company was not within the terms of the act, as it was not a meat-food product, which is prohibited from shipment without inspection. The reasons for reaching that conclusion are set forth in the opinion of the District Judge. 229 Fed. Rep. 214. The Circuit Court of Appeals reached the opposite conclusion upon the testimony adduced. 232 Fed. Rep. 694.

An examination of the record satisfies us that the Circuit Court of Appeals reached the right conclusion. The oil, here in controversy, the testimony shows is generally known as "oleo" oil, and is not "tallow" oil as that term is generally understood by the trade. Both oils are made from the fat of slaughtered beeves. Oleo oil by itself is seldom used as a food. It is, however, largely used in the manufacture of oleomargarine. In fact it constitutes a large percentage of that product. It is used in cooking for shortening purposes. Made as it is by the Melting Company it has no quality which prevents its use for such food purposes. It is not a tallow oil, distasteful and unfit to use in the making of food products. Without elaborating the discussion, we reach the conclusion that this product was clearly a "meat food product," within the meaning of the statute. It is true that the Melting Company does not sell it as such, and now marks it as "inedible." But that does not change the fact that a main use of such oil is in making edible products. The Company has no control over the use of the oil after it is shipped, and the record

does not disclose what use is made of a large percentage of its product which was shipped abroad at the time this action was begun.

The enactment of the statute was within the power of Congress in order to prevent interstate and foreign shipment of impure or adulterated meat-food products. The statute does not specifically define a meat-food product. In our view the product of the Melting Company is a meat-food product in the sense of the use of those terms in the statute, and as such subject to the regulations of the Secretary of Agriculture. It being such meat-food product the Melting Company could not truthfully claim that it was not capable of being used as food by man, and hence could not make the certificate required.

The theory of the bill is that the product in question was not within the terms of the act; the District Court reached the conclusion that this theory was the correct one, and so rendered a decree which required the Railroad Company to receive the oil for transportation in interstate and foreign commerce, without inspection, when labeled "inedible," and accompanied by the certificate of the Melting Company that such oil is inedible and not intended for food purposes and is of such a character that denaturing is impossible or will render the oil unavailable for the desired industrial use. This decree is consistent only with the finding of the District Court that the product was not a meat-food product within the meaning of the statute.

As we have said, we think the record shows, as found by the Circuit Court of Appeals, that the oil made and offered for shipment by the Melting Company was a meat-food product, and hence subject to the regulation of the statute requiring inspection before shipment. The decree requiring such oil to be shipped without inspection was properly reversed.

Affirmed.